

Leadership, Ethics and Law of War Discussion Guide for Marines



MICHAEL FAY
SSGT USMC
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Leadership, Ethics and Law of War Discussion Guide for Marines

Lejeune Leadership Institute

Marine Corps University

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2008

To those Marines and Sailors, deployed in harm's way, who do the Nation's bidding.
They make the American people proud and honor the legacy they have inherited. May
we all appreciate the freedom hard earned by their sacrifice.

Cover Art

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Foreword

On 16 March 1968 in the village of My Lai, Vietnam, Army Lieutenant William Calley's troops from Charlie Company, Eleventh Brigade, Americal Division slaughtered over three hundred apparently unarmed civilians, primarily the elderly and women and children, including infants in their mothers' arms. The destruction on the ground on that March day was horrible, but it was almost inconsequential when compared with the aftereffects from worldwide revulsion against the My Lai massacre. Time would show that, whether in terms of casualties, support at home and around the world, or prosecution of the conflict, the negative fallout of My Lai for the entire American military effort in Vietnam was incalculable. The unintended consequences were far more severe for the United States military effort than any possible benefit hoped for as a result of the actions in the village of My Lai. In similar fashion the humiliation of Islamic prisoners at Abu Ghraib in Iraq by American soldiers resulted in worldwide outrage. The issue at Abu Ghraib was not, in essence, about causing the death of prisoners, but rather about full compliance with the provisions of the Geneva Conventions, including protocols to which the United States was not a signatory. American soldiers found to have directly participated in the mistreatment of prisoners were tried and convicted at courts martial proceedings and given long prison sentences. While the criminal behavior for which these troops were convicted did not result in My-Lai-like carnage, they were My-Lai-like in that the worldwide outrage was a negative factor for American military operations in Iraq, and ultimately contributed to the loss of American lives in subsequent operations in Iraq and elsewhere.

At My Lai the issue was partially a consequence of having to fight against an enemy that disguised itself as civilians. They wore no uniforms. They displayed no distinguishing insignia. They carried no weapons openly. While pretending to be civilians they slaughtered countless American troops using mines, improvised explosive devices, and other hidden weapons. They were, in other words, in flagrant violation of the Geneva Conventions by their failure to identify themselves as combatants. By

falsely presenting themselves as non-combatants they were putting actual non-combatants in harm's way, since U.S. troops could not differentiate between combatants and non-combatants. But the problems contributing to the events at My Lai were more complex than that. For example, the American system of military conscription was administered so unfairly that many of the best and brightest were able to avoid being drafted. As a consequence, leadership in some units was devolving on to less competent, less qualified, less intelligent persons. Over time, in the 1960's, many of America's young people were caught up in a counter-culture movement that rejected authority at every level and embraced a lifestyle that incorporated use of a wide range of illicit drugs. Eventually these attitudes and practices filtered into elements of the military. The result was a Vietnamese enemy behaving in ways that would in earlier wars have been considered war crimes, and an American armed force on the ground being directed by an increasingly less competent leadership cadre as the war continued without resolution.

These negative forces at work among the military during the Vietnam war make it difficult, when looking back, to obtain a realistic perspective. During the latter phases of the war, the attitude of much of the media and of many citizens toward our troops was highly negative. They were frequently portrayed as having committed war crimes on a daily basis. The military leaders at every level of command were said to be fully aware of the alleged atrocities, even lending their approval to the criminal activity. Even today, most Americans probably believe that WWII was fought at a much higher ethical level than was the war in Vietnam. But does that perspective have merit? Despite the widespread publicity given events such as My Lai, it is surely true that, in terms of destruction of innocent life, the behavior of American troops in the Vietnam conflict was more humane than that of American troops in earlier conflicts. It was routine for entire cities, including the civilian populations, to be bombarded and leveled in the rush across Europe enroute to Berlin in 1944 and 1945. The firebombing by American and allied forces of cities such as Dresden and Tokyo resulted in the intentional incineration of hundreds of thousands of civilians – civilians who fully met the legal definition of non-

combatants. The illegal slaughter of civilians in these cities was not the consequence of aberrant behavior of a small minority of troops, but of deliberate policy choices at the highest levels of government. Certainly nothing in Vietnam approached the magnitude of these earlier, officially sanctioned operations in violation of the law of war as it existed at the time. Despite widespread media reports implying the contrary, it is probably also true that the behavior of American troops in the worldwide struggle against radical Islamic jihadists in Iraq, Afghanistan, and elsewhere has been conducted with significantly more care than was the case in Vietnam. In other words, objective accounting of the moral behavior of American troops in conflicts of the last three quarters of a century has been substantially different from widely disseminated accounts of that behavior.

Absolute comparisons of the behavior of American troops toward enemy combatants and non-combatants in the European and Pacific theaters in World War II, as compared with Vietnam or the Middle East, are not possible in any meaningful sense. The circumstances surrounding those conflicts are very different. Media reports have shaped perceptions at home, and perhaps to an even greater extent, beyond our borders. Beginning with Vietnam our nation's wars have been fought in the glare of television cameras. What those cameras showed on the world's television screens was not always a dispassionate rendering of events on the ground. It was, rather, a mixture of recording of events and a selective use of what was recorded, for political as well as informing purposes. In Afghanistan, and particularly in Iraq, media representatives have routinely been embedded within military units during combat operations. Even Vietnam was not subjected to as much recording and reporting of the minutiae of operational action as is the case in Iraq. It is also true that the war against radical Islamic jihadists is being fought at a time when the political climate at home is highly polarized. Modern technology and the internet make it possible to disseminate information about the war, even if blatantly false, instantaneously, freely, and comprehensively. Accordingly, in the current climate, any actions on the battlefield, however portrayed, are sent to the world in real time with essentially no opportunity for timely counter-portrayal.

After World War II the United States was regarded by the rest of the world as the most powerful, wealthiest nation in the world, and by many as the protector of freedom everywhere. That perception has been eroded in recent decades. Whether attitudes during the past fifty years toward the United States by other players on the world scene are motivated by envy, fear, loathing, humiliation, weakness, relative poverty or some combination of these and other variables, the fact is that attitudes have changed.

It is unlikely that the above disparities between reality and perception will move in a direction that favors American use of force anywhere in the world. For deployed American troops, fighting ethically is the bedrock that must undergird fighting effectively. In the current and foreseeable political climate it is critical that the troops behave at a level that is above reproach. There are a variety of moral reference-points that are commonly put forth as the criteria against which right and wrong are assessed. Unfortunately, these reference points are often either transient, excessively complex, or in conflict with other equally credible standards. There is, however, a reference point to which the military person can adhere with supreme confidence, namely the United States Constitution. While the rationale for this choice may not be immediately obvious, the reasons are numerous. The Constitution, the defense of which is the only oath the military person takes, is binding upon each soldier, sailor, Marine, airman, coast guardsman. Its essential provisions are understandable to all. The Constitution is the source of many of our national and personal values, including the bill of rights and other rights guaranteed by subsequent amendments. It provides concrete guidance for conduct and applies to a broad range of situations.

Essentially, the constitution operates for the military as a constraining document – that is, it places limits on actions the military may take. It ensures that the military is constrained by the President as Commander-in-Chief. The President determines employment, deployment, policy, and rules of engagement. The Constitution also grants constraining powers to the congress in its function of regulating the armed forces. It is

the congress that formulates the Uniform Code of Military Justice (UCMJ), pay and allowances, promotions, funding for operations, and laws such as the War Powers Act. It is the congress that ratifies treaties that specify rules for the use of force in military conflicts. The courts have constraining powers in their constitutionally mandated role to interpret any and all laws that affect the military. A major constraining aspect inheres in what the constitution calls the supreme law of the land. Included here are all provisions of the Constitution itself and all laws created in accordance with the Constitution. Also included are Conventional International Law (treaties into which the nation has entered) and Customary International Law (executive orders requiring compliance even if a treaty is not ratified). Thus, the military is constrained by all the provisions of the Hague and Geneva Conventions that have been ratified by the congress. Compliance with these constraints is not optional for military members.

The oath taken by American military persons reserves their highest loyalty for the Constitution. Accordingly, the mission assigned to a unit must never be pursued in a way that violates the various constraining provisions of the Constitution. There are also other competing claimants to one's loyalty. The military person must not permit loyalty to his or her own service to undermine the accomplishment of any mission that involves operations with other services. No commander may undermine the larger unit or military service by, for example, submitting false readiness reports in order to make the local command appear to be more combat-ready than it is. It would be unethical to support a shipmate in behavior that undermines the readiness of the ship. Self-promotion at the expense of fairness to peers in one's unit is clearly unacceptable. Therefore, a rational priority of loyalties calls for loyalty first to the Constitution, then mission, then service, then command/ship, then shipmate, and then self.

Fidelity to the first element of this priority – namely, the Constitution -- is dependent upon knowing the constraints incorporated by that founding document. One vehicle that specifies those constraints in a practical sense for troops engaging the enemy is the rules of engagement (ROE). The ROE spell out specific permitted and prohibited

actions. They are formulated to incorporate the constraints put in place by the various laws of armed conflict and by other laws enacted under the authority of the Constitution. *Semper fidelis* is more than a motto – it is a way of life, and nowhere more so than in moral behavior in combat. Robert C. McFarlane, former National Security Advisor under President Ronald Reagan and a former Marine Corps officer and combat leader has recently (late 2007) composed a statement on torture that included the following wise injunction.

Moral authority is more than a metaphysical abstraction. It is fundamental to garnering respect among nations and any aspiration to lead them. If a nation expects others to follow, allies must find it worthy of respect -- especially in the humane treatment of prisoners and adherence to the laws of war including the Geneva Convention. In the years ahead as we wage the global struggle against radical Islam we must have the moral authority to rally others.

Behaving during combat operations in ways that demonstrate moral authority is not an easy matter. Some of the same factors that made operations in Vietnam so difficult are present to an even greater extent in the war against radical Islam in Iraq, Afghanistan, and elsewhere. The radical Islamic jihadists, like the Viet Cong in Vietnam, refuse to differentiate themselves from the civilian population. They wear no uniform, no distinctive insignia, and do not openly carry their weapons. In addition, this enemy seeks to destabilize society and create the conditions for a civil war by routinely and systematically slaughtering non-combatants. As a result, American and allied troops are engaging a ruthless enemy, one whose very conduct of warfare is analogous in some ways to the Nazi machine in Germany in its murderous activities against civilian Jews throughout Europe during World War II. The actions of the Islamic jihadists in Iraq and elsewhere define them daily as war criminals in their deliberate slaughter of non-combatants. While the world is largely not offended by this genocidal activity, it is highly sensitive to the slightest departure from the norms of the Geneva Conventions in regard to behavior of American troops. It is irrelevant that this constitutes a double standard. What is relevant is that this is the prevalent worldview. There are many reasons that we

viii

must be in absolute compliance with the Geneva Conventions. The reality of this worldview is one of those reasons.

Our troops are capable of learning what is permitted and what is prohibited under the existing laws of armed conflict. Leaders at all levels must be able to cull out every proscribed action from the repertoire of behaviors that constitute the application of deadly force. The leader must then be able to transmit that same understanding to his followers. Perhaps more importantly, he must take them beyond mere knowledge to the higher realm of commitment. While the process can be complicated if presented in an overly theoretical, academic sense it can be made more attainable when presented in concrete situations. The case studies assembled in this volume provide a highly effective means for translating the theory of constraints into a tool for decision-making and informed action. Leaders can use these case studies to explore the boundaries within which behavior in combat is legitimate. Analysis of the cases must always take into account possible unintended consequences that can result from violating the constraints. The leader who cares about his people and his nation must take his followers beyond mere knowledge into the world of informed commitment.

This volume includes for the leader an introduction to and discussion of four stages of moral development. Those stages are differentiated along a continuum of compliance, moral understanding, moral maturity, and moral ambition, including concise and helpful explanations of each phase. Also included is a useful opportunity for self-assessment using the notion of a moral compass. Finally, it incorporates a series of tips to help the discussion leader prepare adequately for evoking from his followers both knowledge and commitment.

The collected case studies consider a wide range of situations. They present the readers with interesting and likely dilemmas that expose the complexities involved in making ethical decisions in times of stress and, often, severe risk. The cases raise all the familiar issues: appropriate loyalty versus misplaced loyalty, conformity with the

rules of engagement in a world of significant risk, publicizing unverified stories when the truth can be learned, disobedience of legal orders on the basis of personal beliefs, death notification to families when there are unresolved issues regarding the death, standards of resistance to be met by troops who are captured, use of firepower when innocent civilians will be killed in the effort to support troops under attack, appropriate response when small leadership failures throughout an entire chain of command result in the death of a marine in a training exercise. These and other similar issues emerge from the pages of each case study. The authors of this volume provide sufficient insightful discussion questions for each of the cases to ensure that discussion participants will emerge with enhanced appreciation for, understanding of, and commitment to the values embedded in the lessons learned from the events under consideration.

Discussion of these cases has merit at every level of leader and follower. The cases are clear enough to be both meaningful and useful to the youngest, least experienced marine in the unit. On the other hand, the issues raised by the cases are profound enough to stretch the intellect and the understanding of the most senior and experienced. They will hold the attention of leaders and followers at every level in between. Faithful study and application of the lessons of these cases have the potential to make a significant contribution to dealing successfully with the complexities of the long war in which we are now engaged.

SEMPER FIDELIS

Paul E. Roush

Annapolis, MD

December 14, 2007

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Lieutenant Colonel Mike Parkyn devoted hundreds of hours to the final preparation of this Guide. As the Director of the Lejeune Leadership Institute, he carries the torch for the formulation of the Corps' doctrine, policy, and curriculum concerning leadership and ethics. A proven combat leader, he is exactly the warrior philosopher needed to fill this role. Without his personal involvement in this project, this guide would probably never have been published. It is perhaps even more appropriate that Mike's wife, Amy, be recognized, as she gave birth to their sixth child while he slaved away countless hours in the editing process.

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Several junior officers, most notably Second Lieutenants Sara Sundberg and Tyler Johnston, have contributed their talents and energy to editing and preparing this document for final publication. Their future, and thereby the future of the Corps, is very bright indeed.

Preface/Glossary

The primary purpose of this guide is to provide small unit leaders the tools with which to address the leadership and moral dilemmas of military service, particularly those dilemmas encountered on the battlefield. When it comes to ethical decision-making, there are few situations that present black and white choices. The moral dimension of leadership, when compared to the mental and physical dimensions, is abstract. Rarely does training and education prepare the warrior for the level of ambiguity encountered in the field. The Long War promises more of the same for many years to come—whether the battlefield is Iraq, Afghanistan, or even on American soil. Marines will be asked to make rapid, life-and-death decisions based on incomplete and conflicting information. The very fate of the Nation often hangs in the balance of those decisions. Marine leaders owe their subordinates and the institution a sound and fully prepared program of development. This document can be part of that program.

The secondary purpose of this effort is to introduce those yet to go into harm's way to the nature of the decisions potentially encountered. It is always difficult to simulate combat in a training environment. It is particularly difficult to simulate ethical decision making in combat. Marines receive formal Law of War, Escalation of Force, Rules of Engagement, operational culture, and ethics training beginning at the entry level and culminating in unit-level training such as Exercise Mojave Viper. Role players can simulate the stresses and complexity only so effectively. Informal discussion and "hip pocket" classes by experienced and thoughtful leaders fill in the gaps. This collection introduces those who have not undergone formal training to the nature and variables of decision-making as well as the standards and expectations of the institution.

Finally, an added benefit of this book is that it gives the non-uniformed reader an appreciation for the difficulty, complexity, and consequences of the decision making that young Marines and soldiers encounter daily in the course of their duties. At no time in America's history have we asked more of our warriors. At no time in our in our history have they answered the call more magnificently. Today's young soldiers, sailors, airmen, and Marines should make us especially proud. They risk all for a Nation that sometimes doesn't fully understand or appreciate what it is they are doing. Many see

only the result of bad decisions or failed policy. The stories of the successes, lives saved, tactical triumphs, and honor upheld rarely are widely broadcast. Take comfort knowing it is those successes that are the norm while the failings (some detailed herein) are the thankfully rare exceptions.

A few terms you should be familiar with before using this guide:

Adaptability is the capability of planning and decision making to cope with unfolding events.

Bearing is an individual's quality of carriage, appearance and personal conduct.

Character is a set of personal qualities, both in-born and developed, that distinguish one person from another. Character development is the building of targeted qualities in the hope of making a better, more complete person.

Climate is the prevailing set of implicit and explicit conditions or set of attitudes that are established by leaders, and can be manifested in the behavior of people regardless of environment or occupation.

Commitment is the state of being bound emotionally, intellectually or spiritually to someone or something. In Marines, it is the spirit of determination and dedication that leads to professionalism and mastery of the art of war. It leads to the highest order of discipline for unit and self; it is the ingredient that enables twenty-four-hour-a-day dedication to the Corps and Country; pride; concern for others; and the unrelenting determination to achieve a standard of excellence in every endeavor.

Courage is the mental quality that enables one to pursue a goal in spite of fear of physical, professional or personal danger.

Decisiveness is the ability to reach decisions promptly and to communicate them effectively.

Dependability is the certainty of an individual's or unit's proper performance of duty.

Endurance is the mental and physical stamina measured by the ability to withstand pain, fatigue, distress and hardship.

Enthusiasm is the display of sincere interest and exuberance in the performance of duty.

Ethics (from the Latin *ethica*) is the philosophy, values, and principles that aid individuals or groups in determining right from wrong. While there are separate fields of ethics, applied professional military ethics, is the purpose of this book.

Honor is the quality that guides Marines to never lie, cheat or steal; to abide by an uncompromising code of integrity; to respect human dignity; to have concern and respect for each other.

Integrity is the strength and soundness of character resulting from an individual's commitment to internalized values. In Marines, integrity is seen in uprightness of character, soundness of moral principal, and absolute truthfulness and honesty.

Initiative is the ability to see what has to be done and commence a course of action in the absence of specific orders.

Justice is the quality of being impartial and consistent in the exercise of authority.

Loyalty is one individual's commitment to another person or institution. Marines express loyalty in their faithfulness to country, Corps, unit, seniors, and subordinates.

Morality (from the Latin *moralitas*) defines proper behavior. Morality is a personal system of intentions and beliefs.

Tact is the ability to deal with others without creating offense.

Unselfishness is the avoidance of providing for one's comfort and personal advancement at the expense of others.

Values are basic ideas about the worth or importance of people, concepts, or things. The U.S. Marine Corps has well publicized values (Honor, Courage, Commitment) and standards. This volume is an aide for discussing the application of those values and standards.

Virtue (from the Latin *virtus*) is a positive character trait. The Marine Corps Leadership Traits are the fourteen qualities of character most valued in Marine leaders (integrity, knowledge, courage, decisiveness, dependability, initiative, tact, justice, enthusiasm, bearing, endurance, unselfishness, loyalty, and judgment). The Greek root of the concept of virtue, *ēthikē aretē*, suggests that habituation of excellence is required to consistently behave virtuously.

Joseph J. Thomas, Ph.D.

Director, Professional Development

Table of Contents

Foreword	iii
Acknowledgements	xi
Preface/Glossary	xiii
Table of Contents	xvii
Introduction: The Four Stages of Moral Development in Military Leaders	1
The Moral Compass: A Self-Assessment	11
Some Additional Thoughts on Predisposition	12
Tips for Discussion Leaders	15
Case Study 1: Honor vs. Loyalty: Marines at Haditha November 2005	19
Case Study 2: Reporting an Incident: Marines at Hamdaniya	39
Case Study 3: Honor and Personal Integrity: A Marine at Mahumadiyah	49
Case Study 4: The Aviano EA-6B Gondola Mishap	71
Case Study 5: Accountability and Responsibility: Marines at 29 Palms	89
Case Study 6: Too Many Chiefs and Too Few Indians? The O'Grady Rescue	103
Case Study 7: Heartbreak to Disgust: A Ranger Dies in Afghanistan	115
Case Study 8: The Strategic Corporal -- Jason Dunham in Iraq	157
Case Study 9: Duty vs. Values: A Soldier in Haiti September 1994	191
Case Study 10: Conduct in Captivity: Royal Marines and Sailors May 2007	217
Case Study 11: Who Lives Who Dies? Combined Action Group, Phu Bai	233
End Notes	247
Case Study 12: Abu Ghraib	249
Case Study 13: Interdiction in Afghanistan	263
Case Study 14: Incident at Shkin	281
Case Study 15: Command Climate and Unit Cohesion: A CSSD In Iraq	293
Case Study 16: Notification of Death in Combat	315
Appendix A: Law of War Principles for Small Unit Leaders	319
Appendix B: Moral Compass Self-Assessment Worksheet	341
Index	346

Introduction: The Four Stages of Moral Development in Military Leaders

Of the three dimensions of leadership—moral, physical and intellectual—the most difficult to harvest is moral development. The physical attributes of leadership—courage, bearing, endurance, and even appearance, can be cultivated through disciplined training. The intellectual aspect of leadership can be cultivated through intensive study of human nature, crisis management, leadership and managerial technique, philosophy, logic, and so on.

The moral aspect of leadership—personally understanding, embracing, and inculcating ethical conduct in others is far more difficult to develop in leaders and can be far more time consuming. In spite of decades of highly publicized moral/ethical failures on the part of its military members, the DoD has not achieved a satisfactory method for addressing the moral development of service men and women.

Pronouncements from DoD leadership have been common. Secretary of the Navy, Gordon England, recently published an “All Navy/All Marine Corps” message entitled “Expectation of Ethical Conduct,” in which he stated, “it is essential that all Department of the Navy personnel adhere to the highest standards of integrity and ethical conduct. The American people put their trust in us and none of us can betray that trust. The standards of conduct are designed to ensure that we retain the trust of the American people.”¹ Secretary England limited the scope of his comments to matters of personal monetary gain, such as use of government resources, the acceptance of gifts, financial interests, and the seeking of future employment. However, ethics regarding personal financial gain are but one issue in the far broader category of military ethics.

If ethics is a system of moral values and morals are principles of right and wrong in behavior, then moral development is the quest to learn right from wrong. This quest is not simple, yet there are some who grasp its lessons intuitively. This quest is not brief, yet there are those who negotiate it quickly. This quest can be broken down into four discernable “stages.”²

The four stages of moral development in leaders are compliance, moral understanding, moral maturity, and moral ambition. These stages are not new. The

Roman Centurian moved along a similar path from *obsequium* (obedience to orders, compliance with directives) to *fides* (faith in the organizations and institutions that generate those orders and directives) to *integritas* (wholeness, completeness, integrity). To accomplish this they worked hard to develop their leaders through a variety of means designed to create *prudentia* (knowledge gleaned from experience) and *sapientia* (knowledge gleaned from focused, scientific study).³

Compliance

Compliance is more about simple behavior modification than it is about some deeper, existential understanding of the role of the leader and the meaning of life. Every moral development program, whether it is associated with acculturating an individual to the military service, a religious order, or a new family, begins with an expectation that behavior may indeed have to be modified. Because the regimented demands of military life are so drastically different from life in the civilian world, this first step—fashioning a sailor or Marine capable of complying with critical orders quickly and unflinching—is typically quite harsh. The more demanding and exacting the organization, the more demanding and exacting this introduction. Thucydides words of 404 BCE apply equally today, "We must remember that one man is much the same as another, and that he is best who is trained in the severest school."⁴

For those with a background and preparation suited to the new calling, achieving compliance may be a minimally intrusive process. For those requiring serious behavior modification, the paradigm shift may be long and painful. Some willingly comply with a new set of rules, standards, and beliefs. Some fight the process and are incapable of ever living "within the system." Some avoid complete compliance and still manage to succeed within the organization—with both negative and positive results.⁵

Certain military cultures such as that of the Spartans prized compliance above nearly every other attribute. The Spartan child was reared with extreme measures to ensure his compliance to standards of martial expectations. In fact the life of a male Spartan, with few exceptions, revolved around the spoken and unspoken beliefs of his military culture.⁶

Obedience at its pinnacle guarantees order, function, and accomplishment, but as an end-state it is dangerous. Those who stop developing at the obedience level run a risk of becoming unthinking, blind followers. The next level, moral understanding, is a healthy outgrowth from compliance in that it is assertive rather than passive. It requires the individual to think and reason.

Moral Understanding

The leap between compliance and understanding is never made by some individuals. For reasons of attitude or intellect, some are incapable of reflection on the purpose of rules, standards, and beliefs. Others simply reject the concepts underlying those organizational rules and standards. The most important transitory step from the role of follower to that of leader is the step from compliance to moral understanding.⁷

America's cultural pluralism compounds this challenge. The contemporary popularity of relativism—the belief there is no right or wrong, only a variety of ways to “look at” things—has created a generation unwilling to make *value judgments*, a process demanded of military leaders. Moral understanding implies that we make numerous and complex value judgments about the foundational principles that underlie established rules and standards. These judgments precede ethical decisions, which in turn precede ethical conduct, which itself precedes ethical leadership.

Moral understanding at its pinnacle ensures cohesion and clarity. The greatest challenge to leaders is clarifying their expectations to their subordinates. The second challenge is to ensure that those expectations are in constant agreement with the mission and overall organizational principles. Thus, moral leadership is the unending quest to establish understanding—on the part of the leader and his or her subordinates. This understanding is revisited and refreshed regularly and through this process matures into a thorough and more complete understanding.

Moral Maturity

Prussian soldiers distinguished between loyalty, compliance, and faith in superiors and loyalty to and faith in their country. Soldiers who failed their loyalty or compliance with the directives of their immediate superiors were guilty of *hochverrat*. While soldiers who failed the very concepts and principles their country was based upon were guilty of *Landesverrat*. Their moral development demanded not only a disciplined response to immediate superiors, but also their implicit belief in, and conformity to, the expectations of their nation.⁸

Compliance was simply assumed in the highly disciplined world of the military class. Understanding was guaranteed in the militaristic culture of Prussia and reinforced by the rigorous training of the *kriegsacademie*. Moral maturity was pursued by leaders who discussed, revised, debated, and revisited their own moral beliefs. They weighed these beliefs against the needs and beliefs of their country at large. It was only when the morality of the Prussian officer corps began to diverge from the needs and beliefs of their nation that problems emerged. The militaristic culture that became an end in itself, rather than a tool to serve the Prussian, later German, people failed to mature.⁹

Moral maturity assumes that officers remain grounded in a paradigm that regularly returns them to the source of their duty. In the American context it's the Constitutional Paradigm beginning with the U.S. Constitution and moving through the mission, the service, the unit (or ship), the fellow-serviceman (or shipmate) and finally self. Moral maturity is not an end-state, rather, it is the product of continuous evaluation. A moral leader assesses his own beliefs; how those beliefs are manifest in his actions and the actions of his unit, and how closely aligned those actions are with the expectations of his nation, service, and mission.¹⁰

Moral Ambition

Moral ambition is the final and ultimate stage of moral development. It represents the pinnacle of self-actualization. Moral ambition is the active rather than passive pursuit of virtuous behavior not only in self, but in all members within the individual's sphere of influence. It is a quality that few are capable of achieving, for it

demands reflection, willingness, courage, and constancy of purpose. In matters of day-to-day life, moral ambition may cause an individual to impact situations that are little known to others (returning a lost wallet, aiding a stranded motorist, etc.). In certain situations, moral ambition, on the part of influential people, can change the world. In the military context, morally ambitious officers have not only determined outcomes on the battlefield, but they have changed civilization.

From the day-to-day moral stands that many take without being recognized or given credit to a Warrant Officer placing his helicopter between innocent civilians and soldiers gone out of control, to military members who have truly shaped Western Civilization, moral ambition makes day-to-day leadership an agent of profound change. Examples of moral ambition in a leader as commander-in-chief can be found in Themistocles, Cincinnatus, Churchill, or Lincoln. Biography may be the most effective method for introducing the concept of moral ambition. Examples of morally ambitious American military leaders who have changed civilization can be found in Washington, Lee, and Marshall.

Washington at Newburgh

During the winter of 1782-1783 the Continental Army was on the verge of insurrection. Soldiers and officers had not been paid by Congress, creditors and supportive politicians encouraged them to forcefully demand that all back-pay be provided immediately or “drastic measures” would be taken. It appeared that a military coup was in the offing. The conspirators assembled at Newburgh, New York (the town for which the conspiracy was named) and invited George Washington to address their assembly—many with the intention of offering him the position of “emperor” or even king. Washington saw the peril to the new Republic for what it was, a direct threat to the nation’s newly founded liberties. He diffused the situation in typical dramatic fashion.

In the process of addressing the assembled officers and promising to appeal to Congress for all that was owed, he slowly pulled a pair of spectacles from his pocket. The room fell deadly silent, for no one knew the great general required eyeglasses. Even such a simple device to aid the aging Washington was treated with disbelief. As he fumbled to adjust his glasses he stated apologetically, “Gentlemen, you will permit

me to put on my spectacles, for I have not only grown gray but nearly blind in the service of my country.”¹¹ The Army’s differences with their civilian masters were resolved immediately. Many in the room welled up with tears. A clear, important message had been sent by the nation’s greatest soldier—the Army was the servant protector of the people, and the people were directly represented by their elected officials. The precedent and message set by Washington assured that the country would never again come so perilously close to a military coup. American representative democracy was ensured; civilization, as we know it, was preserved.¹²

Lee at Richmond

Fast-forward eighty-two years to St. Paul’s Episcopal Church in Richmond, Virginia. The nation had been recently and nearly completely destroyed by the cataclysm of civil war. The social fabric, particularly of the South, had been torn. People resented change and the agents of change. A recently freed African American man observed the service from the rear of the church. When it was time for communion, he walked to the rail to receive alongside the church’s white parishioners. The congregation was aghast. This seemingly small matter ran completely counter to anything almost anyone in that church had experienced—or would even tolerate. The minister and other communicants were stunned and didn’t move.¹³

Just then, a grandfatherly yet ramrod straight gentleman rose from a pew near the front. Robert E. Lee, the man called “the greatest soldier in the history of the English-speaking peoples” by Winston Churchill understood the situation immediately. He knelt beside the man and both received communion. In an instant a situation was diffused, and more importantly, a message was sent to the congregation, the community, and entire region that change, positive change, was inevitable.¹⁴

While Lee’s actions on that Sunday morning did not themselves end the struggle for the civil rights of African Americans, for that struggle continues today, but that message and the message of rapprochement with the laws and ideals of former enemies became the starting point for healing a nation. Lee would continue to urge his former soldiers to put away their arms and ill will toward the United States. He was, in

many regards, singularly responsible for thousands of former Confederate soldiers' (and the generations that followed) willingness to reintegrate fully into American life.

Marshall at Cambridge

Fast forward another eighty-two years to a podium on the campus of Harvard University, where America's senior and arguably, most distinguished soldier was addressing an audience on America's "proper course" at the conclusion of the bloodiest war the world had ever seen. General George C. Marshall, former Army Chief of Staff and current Secretary of State, did not rally the nation behind punitive measures for its recently defeated enemies. He instinctively realized that punishing and exacting revenge on Germany and Japan would only deepen political rifts and worsen human suffering. Marshall recognized an opportunity to lift former enemies and allies alike from poverty, and by so doing preserve democratic principles and free-market economies that would stand together with the United States against the dreaded rise of yet another form of despotism and subjugation—communism.¹⁵

Marshall's ideas were not unprecedented, but to succeed in a world poisoned by such a great cataclysm would demand every persuasive skill that could be mustered by the widely admired soldier-statesman. Marshall remained above the partisan political fray and appealed to a Congress hostile to the idea of further spending in Europe or Asia and to an American people weary of "foreign entanglements." George Marshall beseeched his countrymen to moral world leadership. He believed that by helping others, we would better guarantee our own security and well-being. His prescient ideas laid the groundwork for not just the policy of containment, but reinforced the American predilection for helping those in need.¹⁶

The product of these actions was nothing less than the salvaging of democracy, free-market capitalism, and universal respect for human rights as the bedrock of Western Civilization. Bold, timely action, deftly taken, preserved a way of life for millions. Marshall, like his predecessors Lee and Washington, had left an invaluable legacy well beyond narrow military service. The moral ambition of military leaders can have an impact well beyond the immediate.

These great leaders, and many others among the generations who followed them in the service of the nation all seized opportunities. They were able to do so only through an advanced understanding of the morality underlying their duty. This moral ambition was the product of their development as leaders from a stage of simple compliance to one of moral understanding and moral maturity. Not all leaders have the opportunity or even ability to exercise moral ambition, but all military officers should be afforded a thorough education in the moral aspect of leadership. Life itself will present many opportunities for leaders to develop morally. Resisting temptations, cultivating the habit of practicing virtues and acting from the core of one's values and beliefs in the crucible events of life and leadership will enable the leader to move from stage to stage in moral development. As observed by Lieutenant General James Mattis, "Your moral crisis will come to you, not when you're rested, not after a good day of athletics out on the field. You are going to have the flu, be dead-tired, and surprised when your moral crisis comes."¹⁷ Leaders' knowledge of moral developmental stages and how to cultivate moral growth through training, education, and mentoring will prepare both themselves and their subordinates to display the spirit of a professional warrior excelling in the moment of crisis. The quest for moral development should be undertaken by those cognizant of its stages, aware of its implications, and respectful of our collective inherited legacy.

¹ Gordon England, Secretary of the Navy, Expectation of Ethical Conduct, (Washington, D.C.: ALMAR 13/04, 011900Z MAR 04).

² Jeffrey Pfeifer and Katherine M.B. Owens, Military Leadership and Ethics, (Ottawa: Canadian Forces Leadership Institute, 2002), 22.

³ William J. Bennett, The Book of Virtues, (New York: Simon & Schuster, 1993), 726.

⁴ Thucydides, History of the Peloponnesian War (New York: Penguin Classics, 1987); quoted in Peter Tsouras, Warriors' Words: A Dictionary of Military Quotations (London: Arms and Armor Press, 1992), 443.

⁵Pfeifer and Owens, 6.

⁶Bennett, 472.

⁷Ibid., Introduction, 4.

⁸Ibid., 727.

⁹Ibid.

¹⁰Paul E. Roush, "Constitutional Ethics," in Ethics for Military Leaders, (Boston: Pearson Custom Publishing, 1998), 29.

¹¹ David Higginbotham, "George Washington's Contributions to American Constitutionalism, in Papers on the Constitution," John Elsberg, ed. (Washington: Center of Military History, US Army, 1990), 11.

¹² Ibid.

¹³ Stanley F. Horn, The Robert E. Lee Reader, (New York: Konecky & Konecky, 1949), 462.

¹⁴ Ibid.

¹⁵ Mark A. Stoler, George C. Marshall: Soldier-Statesman of the American Century, (New York: Simon & Schuster, 1989), 189.

¹⁶ Ibid., 231.

¹⁷ Speech by LtGen James N. Mattis, Ethical Challenges in Contemporary Conflict: The Afghanistan and Iraq Cases, USNA, 8 November 2004.

The Moral Compass: A Self-Assessment

The metaphor of a compass for guiding one's moral conduct is often used. Its meaning generally is taken to be an internal device or tool for guiding ethical decisions. If one possesses a properly calibrated moral compass, he or she can use it in any number of challenging situations to come up with an appropriate solution. Many believe that this moral compass is something you are born with—an innate guiding reference point instilled by the Creator. Others believe the compass is forged in the earliest stages of life, developed well before full adulthood, and little changed through subsequent experience. Yet others believe the compass is provided through the standards and expectations of the society to which one belongs. In this case, the Marine Corps establishes the rules, norms, and other boundaries of conduct at entry level training and reinforces them throughout a Marine's service.

How one views the origin of the moral compass says a lot about his or her approach to moral decision making. Answer the questions in Appendix B to take stock of your views of the moral compass. After you have considered and written down your answers, think about how your Marines may answer the very same questions. An exhaustive values and ethics survey conducted in 2007 revealed variances by rank and experience, but maturity is not the sole factor affecting character or the moral compass. Upbringing that occurs well before a Marine steps onto those yellow footprints has a great deal to do with his worldview.

Next, make copies of the Self-Assessment at Appendix B of this book. Give your Marines enough quiet time to think about and complete this assignment. There is no space for their name on the worksheet for a reason. This reflection should be completed anonymously to encourage honesty. Collect and review their responses. Are there any trends? How do their perspectives differ from your own? Only after you've taken stock of your moral compass, the values system of those you lead, and how they may differ, can you press ahead with an honest discussion.

Some Additional Thoughts on Predisposition

Discussions among military professionals regarding ethics typically reveal two identifiable “camps.” One we shall call the *utilitarian* camp. These individuals are characterized by tough, pragmatic thinking. They weigh the costs against the benefits when taking certain actions and often digress into the mindset “I’d rather be judged by twelve than carried by six.” This view is practical, easily understood and, in my view, fundamentally flawed.

The second group can be titled the *moralist* camp. This group, knowingly or unknowingly, subscribe to the world view of the great German philosopher Immanuel Kant, who argued that life should be governed by immutable, universal moral principles. This approach is ethically righteous, admirable, and for all practical purposes, highly unrealistic.

The problem with the utilitarian camp in the current operating environment is they are taking the convenient and safe way out. War is, by definition, risky. We ask young Marines and soldiers to do the illogical—namely put themselves intentionally into harm’s way. In fighting insurgencies we ask them to assume additional risk. By not firing until they’ve identified unmistakable targets, they extend exposure to deadly harm. On most of the hostile islands in the Pacific Theater of World War II Marines lived by the axiom “When in doubt, empty the magazine.” On the battlefields of the Twenty-first Century, certainty in target selection is paramount. We often speak of thinking warriors and how they must *discriminate* between a true hostile and someone who appears potentially dangerous. We speak of *proportional* response to threats. Use the discussion to identify the “utilitarians” in your unit and make them more comfortable with assuming additional risk.

The moralist camp can be equally wrongheaded. Their penchant for boiling down elements of their own moral code of “thou shalt...and thou shalt not” is often applied unreasonably to those around them. On issues of clear legality defer to the moralist approach. In the laws of war, rules of engagement, and criteria governing escalation of force, right and wrong answers do exist. (See Appendix A: Law of War Principles for Small Unit Leaders). In matters of moral conduct, ethical compliance represents a mere starting point. The truly tough aspects of ethical decision making

involve morally complex and ambiguous options. More often than not, the ethical decisions of military leaders are characterized by the “damned if you do, damned if you don’t” dichotomy. This very dilemma resists simple solutions. If they arrive back at their original position, no problem. They will at least be better for having explored the notion that there is not always a clean, obvious answer to handling difficult moral challenges.

What then should be the proper ethical framework for military service? What is the stock answer in the morally ambiguous, irregular Long War? The answer lies somewhere within a most ancient approach—character development. One of the earliest proponents of character development was Aristotle, the personal tutor of the greatest military commander of the ancient world, Alexander the Great. Aristotle believed proper conduct could be developed through *habituation*. Habit leads to consistent moral behavior, which leads to strong moral character, which in turn leads to the development of practical wisdom or as Aristotle would have called it, *phronesis*. Practical wisdom forms the foundation of character.

If the unit leader uses this book to open a dialogue with his Marines but fails to follow up on its lessons, very little learning—let alone change—will take place. Moral behavior must be discussed and modeled. Defining moral expectations and demanding behavior aligned with those expectations helps Marines habituate right conduct. Habituated right conduct (we hope) eventually leads to internalizing the Corps’ ethos grounded in our core values of honor, courage, and commitment. It worked for Alexander the Great, it can work for today’s Marines.

Tips for Discussion Leaders

On 14 August 1920 Major General John Archer Lejeune issued Marine Corps Order No. 29. In that order, Gen Lejeune articulated the role of the Marine leader as that primarily of teacher and the role of subordinate foremost as scholar. Since that time Marines have embraced the teacher-scholar model and have used it to great effect in their tactics and ethos. The informal, daily training and education that occurs among Marines is at least as important as that conducted in formal schools. Discussions between Marine leaders and their Marines represent the most pure, unencumbered form of instruction.

A discussion is not a presentation, class, or one-way conversation. There is a time and place for that form of instruction, but this book does not provide materials for that format. The case studies captured herein provide the tools to solicit and explore ideas, to debate the standards, and clarify the expectations.

Set the stage. Before you begin the discussion, copy and have your Marines fill out the section entitled “The Moral Compass: A Self-Assessment” provided in Appendix B. You may be surprised by how little they’ve thought about such matters. You may be amazed at how deeply they’ve considered their moral responsibilities. Have them answer the questions on their own, with limited time. Direct, personal answers are the most honest. Allowing too much time for discussion and research may only cause them to hedge their answers. Don’t prejudge. Never make the mistake of dismissing a certain point of view as irrelevant or uninformed. The purpose of discussing materials in this book is to guide moral decision-making, and to clarify ethical expectations and standards of conduct.

Assign Reading. Some portions of this work are brief, simple vignettes designed to be discussed when time is limited. Most of the case studies are designed for deeper, more detailed discussion when adequate time can be devoted to these difficult topics. Few leaders will want to address all of the cases included; they should instead select the case studies that best address their anticipated challenges.

Begin By Clarifying Objectives. Plainly state why its imperative that Marines conduct themselves with honor at all times. Stress the fact that in irregular warfare, moral failings have been more common than tactical failings. In Iraq and Afghanistan, moral failings have led to highly publicized mission failures. The WIFM (What's In It For Me?) for all who take part in the discussion is clear: by understanding the standard of moral conduct, you are better able to accomplish the mission, protect yourself, and uphold the honorable traditions of the Marine Corps.

- ☐ Assign reading.
- ☐ Begin by clarifying objectives. WIFM (What's In It For Me?)
- ☐ Prepare an outline but don't be consumed with keeping it.
- ☐ Know discussion participants.
- ☐ Motivate discussion participants.
- ☐ Start the Discussion.
- ☐ Control the flow of discussion.
- ☐ Summarize and repeat the key lessons of the discussion.
- ☐ Prepare for follow-on activities.

Figure 1. Discussion Leader's Checklist

Prepare An Outline, But... If each discussion enables only two or three clear points about moral decision-making, you have succeeded. The cases themselves can be detailed and complex – what your Marines take away from them should not. The questions added to each case study prime discussants and lead them to think about certain issues. You provide the underlying lesson.

Know Discussion Participants. Wherever possible, know some details about those you lead in this discussion. Adding personal experiences they can relate to or suggesting they share personal stories or facts gives the discussion greater meaning.

Motivate Discussion Participants. The topics of values and ethics often suffer from a reputation of being irrelevant and burdensome at best, counterproductive at worst. It is absolutely critical to remind discussants that these issues are as much about operational high ground as they are moral high ground. In a counterinsurgency, it is often what makes do during interactions with noncombatants that determines long-term success. It is about how Marines treat post-combatants that will be the measure of the mission's success. It is about how Marines uphold their honor during combat that will determine how they recover from its effects.

Start The Discussion. The ancient Greek philosopher Socrates is perhaps best known for his teaching techniques of continuously asking questions. By forcing his students to question their assumptions and explore their positions, he pulled learning from them rather than simply pushing information at them. In the end, they killed Socrates. Your Marines may be frustrated when you force them from their comfort zones, but it will pay great dividends in the end.

Control The Flow Of Discussion. Be very careful not to dominate the discussion or allow one or two strong personalities to do all of the talking. Everyone should be asked for at least one contribution. When the topic is exhausted, move on or end the discussion.

Summarize and Repeat. The last few moments of the discussion are often the most important. Summarize what *you* learned in the process and what you hope they take away.

Prepare for Follow-On Activities. Reinforcing the message of a leadership and ethics discussion can be done formally and informally. Seek out opportunities to reflect on the principles and standards that define service. Shape the climate of the organization by clearly articulating your expectations.

Because of the need to avoid prejudice in legal proceedings related to the Haditha incident, Case Study 1 has been removed from this edition of the Discussion Guide. It will be included in later editions.

Case Study 2: Reporting an Incident: Marines at Hamdaniya

Case Summary: A squad of Marines allegedly commits premeditated murder.

Discussion Topics: Judgment, Tact, Endurance

Target Audience: SNCOs, Officers

Purpose: This case study highlights the contrasts between the timeliness of command reactions to two separate events in Iraq. The first event, the killing of civilians by Marines in Haditha on 19 November 2005, (covered in Case Study 1), is briefly touched upon here. This event, occurring about six months after Haditha, involved the alleged premeditated murder of an Iraqi citizen by a squad of Marines and the immediate actions taken by the chain of command.

Discussion Leader Notes:

Table of Contents

Introduction	41
Haditha	41
Hamdania	42
Questions for Discussion	44
Appendix A: Principal Participants	46
Appendix B: Hamdania Investigation Timeline	47
End Notes	48

Introduction

An organization's command climate – the prevailing set of implicit and explicit conditions or set of attitudes that are established by leaders and can be manifested in the behavior of people regardless of environment or occupation – serves to help shape ethical decision making and subsequent issues resulting from those decisions. When Marine units conduct counterinsurgency (COIN) operations, leaders at all levels are often empowered to make significant decisions that can impact the context of the overall mission. In discussing ethical decision making, Marine Corps Warfighting Publication (MCWP) 6-11, *Leading Marines*, says, “At the heart of the leader's ability to choose correctly is a firm grounding in both institutional and individual values that will point the correct direction, even when the Marine is tired or acting under conditions of extreme stress.”¹ The facts below briefly describe an event at the small unit level and the decisions and actions of commanders one or two levels up the chain of command. These actions serve to support discussion about that “firm grounding in ... values” and the commands’ ethical climate.

This case study highlights the contrasts between the timeliness of command reactions to two separate events in Iraq. The first event, the killing of civilians by Marines in Haditha on 19 November 2005, has been covered in Case Study 1 and is briefly touched upon here. The second event, occurring about six months after Haditha, involved the alleged premeditated murder of an Iraqi citizen by a squad of Marines.

Haditha

As the Haditha case study outlined, investigations were not initiated about the civilian killings until months after they occurred. Within a week of the event, however, there had been at least two verbal reports raising allegations the Marines involved had acted with excessive force and had killed innocent civilians including women and children.² Neither report was acted upon by the immediate chain of command. Neither report led to an investigation or an after-action review.

Two months later, a query about the event by a *Time* magazine reporter generated interest at Multi-National Force-West (MNF-W) and Multi-National Corps-Iraq (MNC-I).³ Following the *Time* magazine questions, formal investigations were initiated. Over the next several months there were two Army Regulation (AR) 15-6 investigations and a Naval Criminal Investigative Service (NCIS) investigation. The investigations led to numerous charges being proffered against eight Marines in December 2006. Those charges ranged from unpremeditated murder to dereliction of duty, the latter being proffered against four officers – including the Battalion Commander – who allegedly failed to accurately report and/or investigate the suspected violation of the law of war.

Hamdania

On the night of 26 April 2006, according to court testimony, seven Marines and a Navy corpsman conducted a patrol in the city of Hamdania in search of a suspected insurgent who had been captured and released three times before. One of the patrol members testified that the squad leader was “just mad that we kept letting him go and he was a known terrorist.”⁴ When they did not find the suspected insurgent, they broke into a nearby house, removed a different Iraqi man, took him away, and shot him to death. They positioned a shovel and an AK-47 rifle to make it appear he was an insurgent killed in a firefight after they had discovered him burying or preparing to bury a roadside bomb.⁵

The squad leader allegedly planned the patrol with the intent of murdering the suspected insurgent, with the knowledge of the squad members. He reportedly said to them after the event, “Congratulations. We just got away with murder, gents.”⁶ On 1 May, five days later, local Iraqis brought the incident to the attention of Marine leadership during a regularly-scheduled meeting.⁷ The Marine leadership immediately initiated a preliminary investigation. That investigation’s conclusions – that sufficient information existed to recommend a criminal investigation – were briefed to MNF-W and the NCIS on 4 May, three days after it began.⁸

On 7 May, still less than two weeks after the event in Hamdania, the NCIS began its criminal investigation. Less than two months later, on 21 June 2006, all eight

participants in the incident were charged with murder, kidnapping, conspiracy, larceny, and providing false official statements.⁹ Five of the eight have since pled guilty to various crimes such as kidnapping, aggravated assault, and conspiracy to obstruct justice. One of the other three was found guilty of conspiracy and kidnapping by a general court-martial on 18 July 2007.¹⁰ The other two are preparing to stand trial for murder and related crimes.

Questions for Discussion

In Haditha and Hamdania, unit leaders heard allegations about excessive force at local meetings with Iraqis within a week of the incidents. Leaders in the Hamdania case immediately took action to investigate. In the Haditha case, the leadership investigated only after the *Time* magazine query.

1. While these two cases involved different types of events, they both led to very serious charges against fifteen Marines and one Sailor. Ultimately, investigations were conducted in both cases – but the investigations were begun in very different time frames after the events.

- What are a unit leader's responsibilities after hearing allegations about misconduct?
- On hearing such allegations, how can a leader differentiate which ones deserve investigation and which ones don't?
- How might the perceived credibility of the accuser(s) influence a commander's actions?

2. One set of commanders in these two cases investigated the allegations very quickly and aggressively, while the other did not act on similar allegations. Although the available facts in these events do not specifically address command climate in the involved organizations, individual commanders and leaders can, by their personal actions and example, influence the ethical and moral atmosphere in which Marines operate.

- In what ways does command climate affect a unit's daily performance? How might it be an important factor when units are under the added stress of combat operations?
- What can leaders do to establish a command climate that prevents events like those in Haditha and Hamdania, and ensures quick reporting and follow-up if they do occur? How does a leader sustain that climate during long periods of stressful combat operations?

- There are perhaps as many examples of command climate as there are commanders, but what are some examples of different types of command climate that might prove most effective?
 - Why might two sets of leaders, in similar circumstances, with similar information, take such opposite action? How do you prepare yourself to face such a situation and make the best decision?
3. Besides the obvious fact that information would be fresher in participants' minds, why else could it be important to investigate allegations quickly?
- What impact might such allegations and their investigations, or lack thereof, have on the rest of the unit? On mission accomplishment?
4. In a COIN campaign, ultimate success depends to a great extent on the ability to defuse local populace support for insurgents. Insurgents often blend in with the population to hide their activities.
- Recognizing the importance of luring popular support away from insurgents, how important is it to the success of COIN operations to investigate allegations aired in meetings with local leaders?
 - How could Marine units demonstrate support for the local populace after such allegations have been raised?
 - How can a leader ensure a balanced approach to allegations by local leaders with a fair assessment of those allegations in a manner that prevents a "witch-hunt" mentality or the appearance of placating local leadership?

Appendix A: Principal Participants

(Persons charged with and/or having pled guilty to crimes)

Haditha

LtCol Jeffrey R. Chessani	Commanding Officer	3rd Bn/1st Marines
Capt Randy Stone	Bn Legal Officer	3rd Bn/1st Marines
1stLt Andrew Grayson	Bn Intel Officer	3rd Bn/1st Marines
Capt Lucas McConnell	K Co CO	K/3rd Bn/1st Marines
Sgt Frank Wuterich	Squad Leader	K/3rd Bn/1st Marines
LCpl Justin Sharratt	Rifleman	K/3rd Bn/1st Marines
LCpl Stephen Tatum	Rifleman	K/3rd Bn/1st Marines

Source: Proferred Charges and Specifications 21 December, 2006.

Hamdania

Sgt Lawrence Hutchins, III	Squad Leader	K/3rd Bn/5th Marines
PO3 Melson J. Bacos	Corpsman	K/3rd Bn/5th Marines
Cpl Trent D. Thomas	Fire Team Leader	K/3rd Bn/5th Marines
Cpl Marshall L. Magincalda	Fire Team Leader	K/3rd Bn/5th Marines
LCpl Tyler A. Jackson	Rifleman	K/3rd Bn/5th Marines
LCpl Robert B. Pennington	Rifleman	K/3rd Bn/5th Marines
LCpl Jerry E. Shumate, Jr.	Rifleman	K/3rd Bn/5th Marines
PFC John J. Jodka	Rifleman	K/3rd Bn/5th Marines

Source: Synopsis of Charges against 3/5 Marines and sailor, 21 June, 2006.

Appendix B: Hamdania Investigation Timeline

2006	
26 Apr	Alleged murder of Hashim Ibrahim Awad in Hamdania, Iraq.
1 May	Alleged murder brought to leadership's attention. Preliminary investigation begins immediately.
4 May	Initial inquiry completed and briefed to MNF-West and NCIS.
7 May	NCIS begins criminal investigation.
10 May	Eleven Marines and one sailor are removed from their unit, 2d Platoon, K Company, 3rd Battalion, 5th Marine Regiment and reassigned to the battalion headquarters at Camp Fallujah, Iraq. Service members are restricted to their living quarters pending return back to Camp Pendleton.
24 May	MNF-W distributes press release concerning the requested NCIS investigation into alleged killing of Hashim Ibrahim Awad.
24 May	Service members arrive at Camp Pendleton and are reassigned to Headquarters Battalion, 1st Marine Division.
21 Jun	Seven Marines and one sailor are charged in connection with the 26 April 2006 death of Hashim Ibrahim Awad near Hamdania, Iraq. Press briefing conducted outside the I MEF Operations Center.
22 Sep	Charges referred to general courts-martial for PFC John J. Jodka, Cpl Marshall L. Magincalda and LCpl Jerry E. Shumate.
6 Oct	The general court-martial for PO3 Melson J. Bacos is held.
17 Oct	Charges referred to general courts-martial for LCpl Tyler A. Jackson, LCpl Robert B. Pennington and Cpl Trent D. Thomas.
26 Oct	The general court-martial for PFC John J. Jodka is held.

6 Nov	The general court-martial for LCpl Tyler A. Jackson is held.
10 Nov	Charges referred to general court-martial for Sgt Lawrence G. Hutchins.
21 Nov	The general court-martial for LCpl Jerry E. Shumate is held.
2007	
3-17 Feb	The general court-martial for LCpl Robert B. Pennington is held.
9 – 20 Jul	The general court-martial for Cpl Trent D. Thomas is held.
20 Jul	The general court-martial for Cpl Marshall L. Magincalda begins.

End Notes

¹ Marine Corps Warfighting Publication (MCWP) 6-11, *Leading Marines*, 27 November 2002, 40.

² Thomas Watkins, "Marine Says He Urged Haditha Probe," Associated Press, 9 May 2007. Also Rick Rogers, "General Questioned Over Lack of Inquiry in Deaths of Iraqis," *San Diego Union Tribune*, 11 May, 2007, B-4.

³ Paul von Zielbauer, "Propaganda Fear Cited in Account of Iraqi Killings," *New York Times*, 6 May 2007, sec.1, p. 1.

⁴ Linds Deutsch, "Sailor Testifies About Killing of Iraqi," *Associated Press*, 6 October 2006.

⁵ Rick Rogers, "Marine Guilty on Two Charges but not Murder in Iraqi's Death," *San Diego Union-Tribune*, 19 July 2007.

⁶ Anna Badkhen, "Two Portraits of Local Marine Awaiting Trial," *Boston Globe*, 15 July 2007.

⁷ Ellen Knickmeyer, "Iraqi's Accuse Marines in April Killing of Civilian," *Washington Post*, 5 June 2006, A01.

⁸ Headquarters U.S. Marine Forces Central Command, Hamdania, Iraq Investigation Timeline.

⁹ Ibid.

¹⁰ Rick Rogers, "Marine Guilty on Two Charges but not Murder in Iraqi's Death," *San Diego Union-Tribune*, 19 July 2007.

Case Study 3: Honor and Personal Integrity: A Marine at Mahumadiyah

Case Summary: After a platoon stops a suspicious vehicle and detains the occupants, the platoon commander personally directs the inspection of their car. After being sent away by the platoon commander, his men hear gunshots. They return to the car, where they find their platoon commander has shot and killed the vehicle's occupants.

Discussion Topics: Judgment, Courage, Integrity

Target Audience: NCOs, Company Grade Officers

Purpose: This case study is intended to foster discussion of two major themes. The first theme looks at honor and asks the question whether an action may be lawful but dishonorable? The second theme looks at the question of personal integrity and the presumption of truthfulness.

Discussion Leader Notes:

Table of Contents

Introduction	51
The Initial Actions	52
Commencing the Mission	52
Taking the Iraqis into Custody	58
The Incident	59
Recovering from the Mission	61
The Initial Report of Possible Misconduct and Investigation	62
Subsequent Actions	63
Questions for Discussion.....	65
End Notes	68

List of Figures

Figure 1. Overview of Area.....	53
Figure 2. Orientation.....	54
Figure 3. Third Platoon Scheme of Maneuver.....	55
Figure 4. Path of white sedan as it departed the target house	56
Figure 5. Location of Incident.....	57

Introduction

In the spring of 2004, Iraq experienced a significant upswing in volatility and violence in the Sunni and Shi'ite areas to the northwest and south of Baghdad. Deadly clashes between Marines and insurgents occurred in al-Anbar Province, where the First Marine Expeditionary Force (I MEF) put down fierce resistance in Fallujah following the brutal killing and mutilation of four American security contractors. In Ramadi, al-Anbar's provincial capital, twelve Marines were killed and further south radical militiamen, loyal to Shi-ite Militia leader Muqtada al-Sadr, rose up and took the cities of Karbala and Najaf. By the end of the month, 134 U.S. troops had been killed, making it the deadliest month for American forces in Iraq to date.

Directly south of Baghdad is an arc of central Iraq where the insurgents were particularly active. The town of Mahmudiyah occupies a central location within this arc. E Company, 2d Battalion/2d Marine Regiment from Camp Lejeune assumed responsibilities for Camp al-Mahmudiyah (and the operational area south of Baghdad) on 26 March 2004, six days after their arrival in Iraq. On 15 April, E Company's 3rd Platoon, with a Marine Second Lieutenant (2ndLt) in command, was designated the Quick Reaction Force (QRF) in the vicinity of Mahmudiyah. The thirty-three year old Platoon Commander, who had served as a Marine Sergeant in Desert Storm in 1991, later received a degree in Business from New York University and became a Wall Street energy trader in New York City. The 9/11 attacks convinced him he should return to the Corps. In March 2003, he received a commission from Marine Corps Officer Candidate School in Quantico, Virginia.

This case study outlines events that occurred on 15 April 2004 in the vicinity of Mahumadiyah, Iraq and the subsequent actions by the Marine Corps chain of command. It makes no judgments on the actions of the Marines involved.

The description of the actions of Marines during and after the event is based on the facts available and is presented in a fashion to foster discussion of two major themes. The first theme looks at honor and asks the question whether an action may be lawful but dishonorable. The second theme looks at the question of personal integrity and the presumption of truthfulness. Because of the complex environments in

which Marine combat leaders must make instantaneous life and death decisions, it is impossible for every decision to be overseen by the chain of command. Marine officers are entrusted with “special trust and confidence” to make the right decisions in those situations.

The Initial Actions

A Marine 2ndLt was the Platoon Commander of the 3rd Platoon, E Company, 2d Battalion, 2d Marine Regiment (3rd Platoon, E/2/2). The unit had arrived in Iraq on 20 March 2004. On 15 April, his platoon was assigned the mission of Quick Reaction Force (QRF) in the vicinity of Mahmudiyah, Iraq.

Iraqi residents of the area “walked-up” and reported that a house was being used by insurgents as a mortar firing position and that the residents were essentially being held hostage in their home.¹ Third Platoon received a frag order to conduct a cordon and search of the house.

The platoon commander described his initial instinct on the mission was that it was a “setup.” “The most critical clue was that the people who gave us this information drew a map. We had never had that kind of a windfall of information. So this thing smelled like an ambush immediately.”²

Late in the afternoon of 15 April, the platoon commander moved his platoon (3rd Platoon, E/2/2) south down Route Tampa to the vicinity of a highway interchange, referred to as the “Mixing Bowl,” in two 7-ton trucks and two HMMWV’s. The platoon delayed there while the platoon commander moved several hundred meters to the west to coordinate the mission at the command post of a Marine 1stLt, the 2/2 81mm Platoon Commander (See Figure 2).

Commencing the Mission

The 3rd Platoon Commander issued his frag order to his squad leaders and then the platoon moved to the north with 3rd Squad on the east, 2d Squad on the west, oriented on a patch of woods. First Squad was the assault force in the center (See Figure 3).

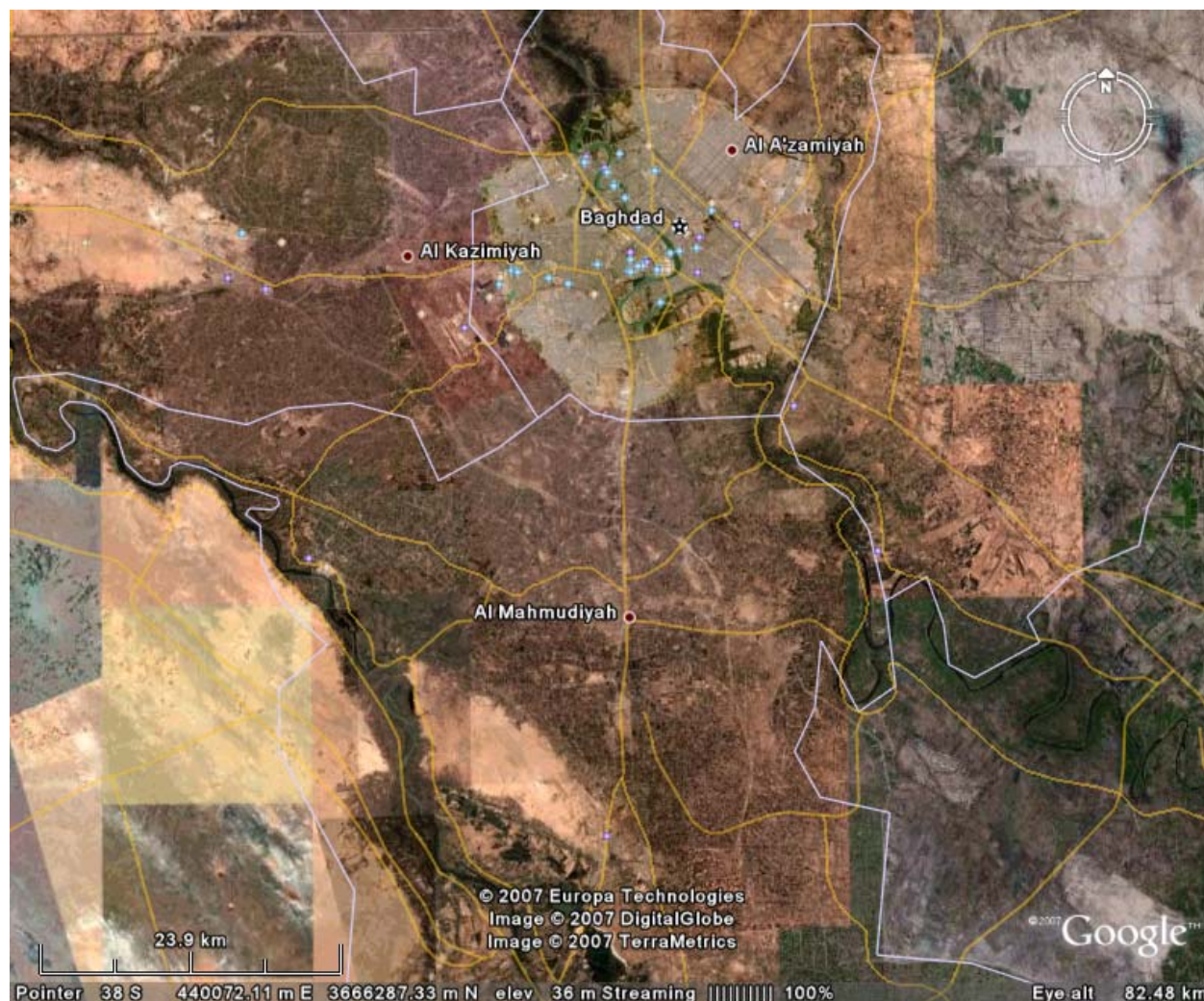


Figure 1. Overview of Area

Third Squad, reinforced by a machinegun section, established a support by fire position on the east side of the target house, oriented to the west, where they could observe the target house and the dirt road immediately to its east. The platoon sergeant was positioned with this unit. The platoon command element moved with five personnel: the platoon commander, his radio operator, a corpsman, an 0211 counterintelligence Marine from 2d Intelligence Battalion (Intel Bn) and an interpreter.

As the cordon was being set, a single vehicle, a van, passed through the cordoned area from the north. It was pulled aside, south of the target house and quickly searched by the Intel Marine and interpreter.³ The rest of the Marines continued to

move north towards the target house to set the cordon with 2d and 3rd Squads and with 1st Squad as the search force.

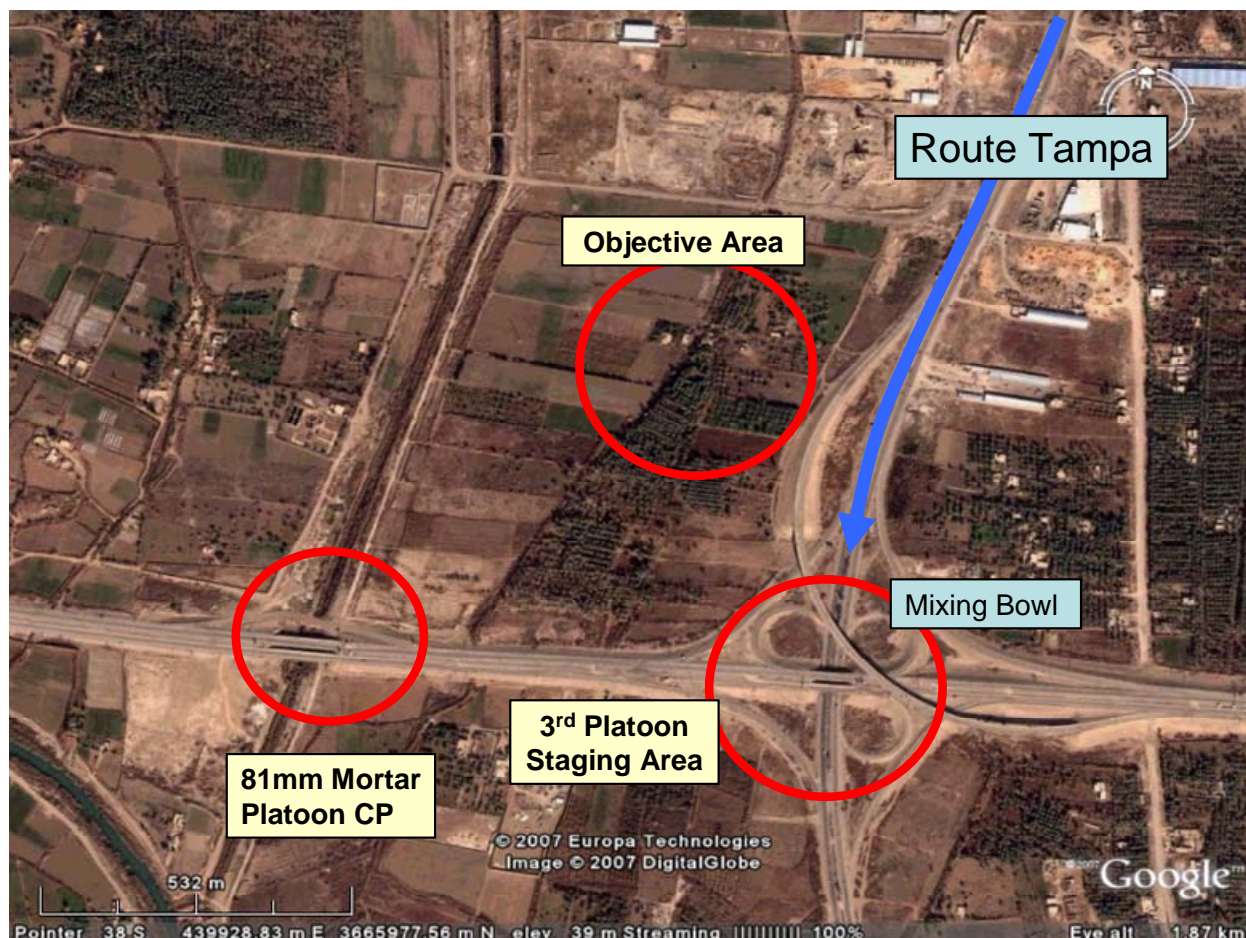


Figure 2. Orientation

As the Marines made their final approach to the target house, two men backed out of the drive in a four-door sedan and drove northward, away from the approaching Marines.⁴ First Squad Marines ordered the vehicle to halt. At first, the driver ignored them. The squad leader and another Marine fired warning shots and the driver then stopped the vehicle.⁵ Upon hearing the warning shots, the Intel Bn Marine, with the interpreter, moved from the vicinity of the white van to the white sedan.

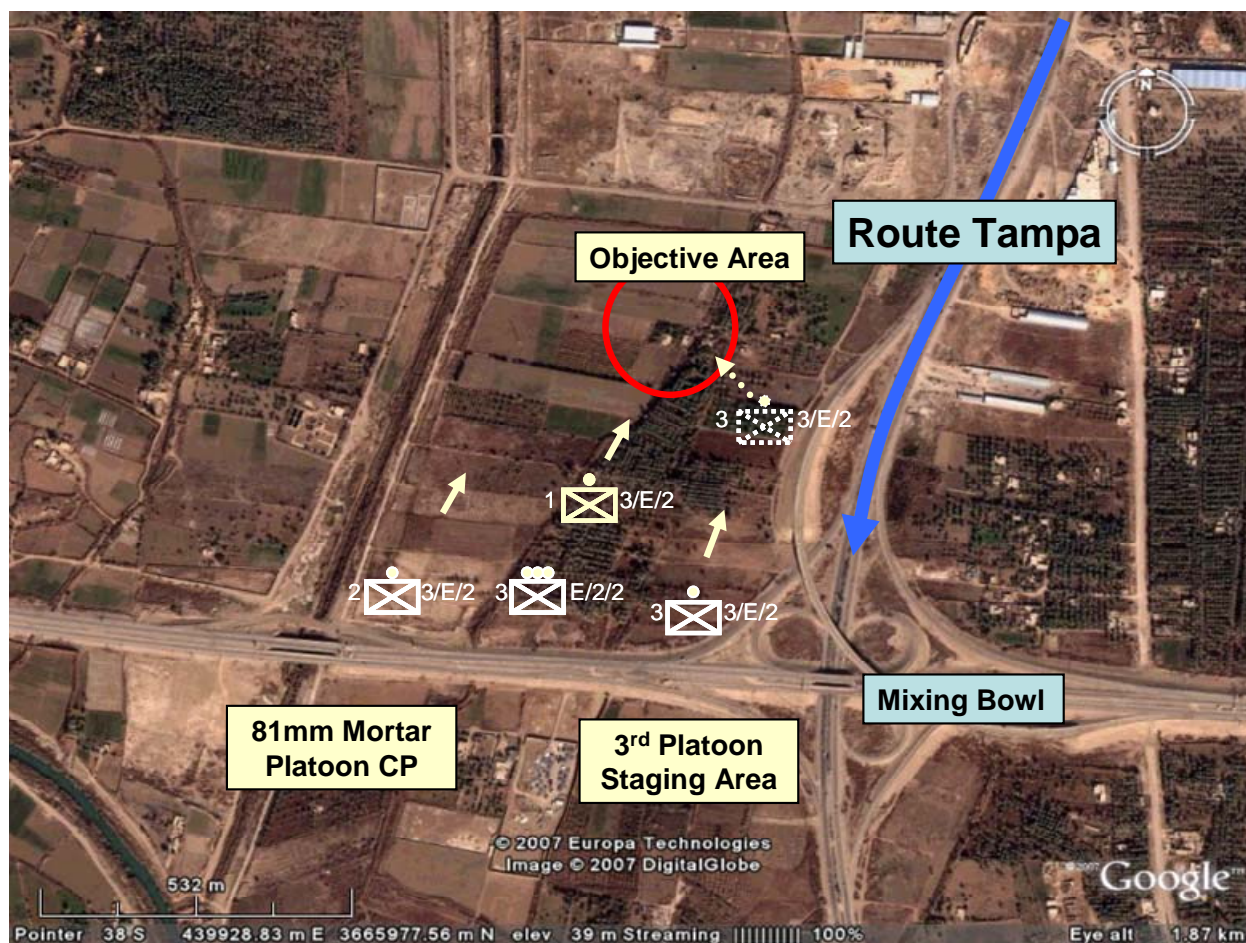


Figure 3. Third Platoon Scheme of Maneuver

The driver and passengers raised their hands in a gesture of surrender. The platoon commander, the platoon radio operator, and the platoon corpsman approached the vehicle. The radio operator moved to the north side of the car, covering the open field to the northwest. First Squad continued their approach to the target house and made entry.⁶ The two Iraqis, later identified as brothers-in-law⁷, were taken out of the sedan and hastily searched by the corpsman. One was described as being in his middle to late thirties, the other as in his teens or early twenties. They did not resist as they were placed on the ground on the side of the vehicle.

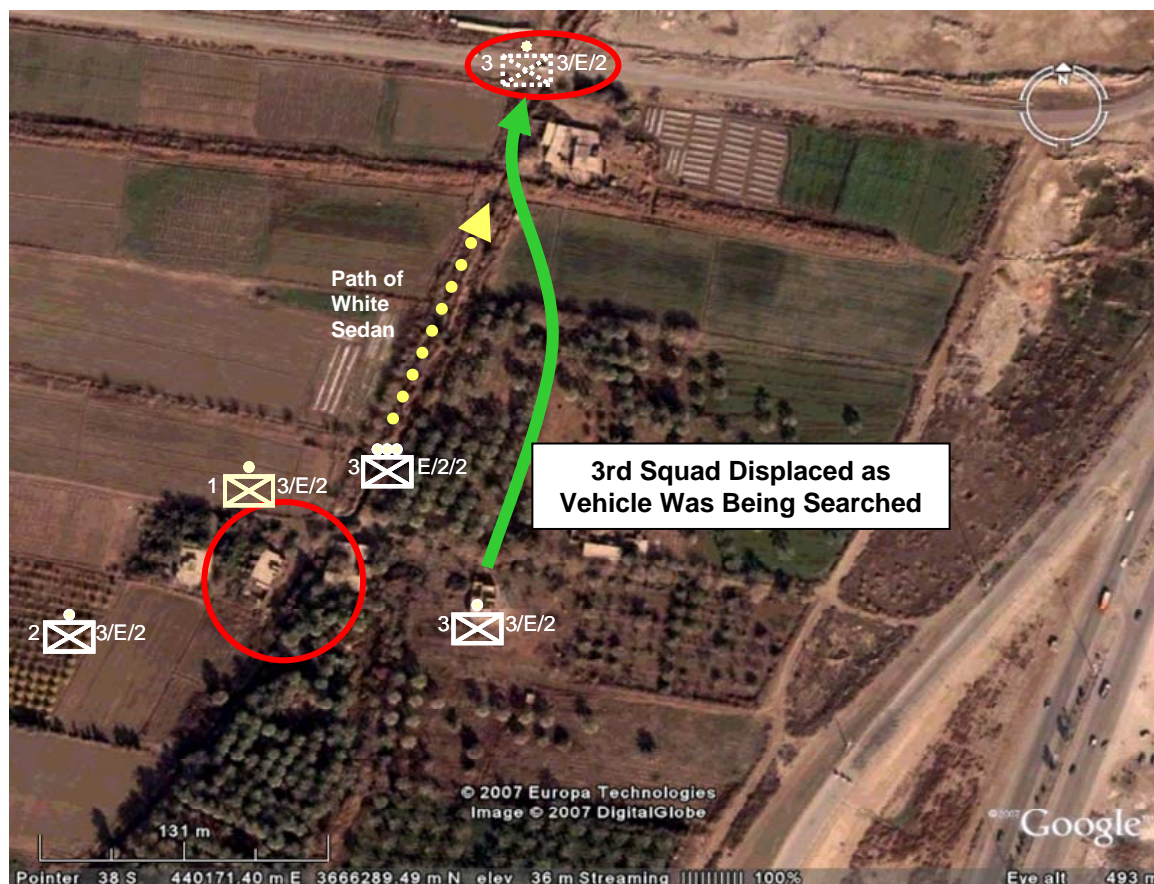


Figure 4. Path of white sedan as it departed the target house

The detainees remained on the side of their vehicle while the platoon commander and radio operator provided security and the corpsman searched them. He had the older of the two Iraqis open up the doors, hood, trunk and glove box of the car and then he conducted a hasty search of the vehicle.⁸ The most extraordinary things he found were some coffee cans of nuts and bolts in the trunk. Nothing out of the ordinary was found in the search of their persons. The initial search took five to ten minutes.⁹

Concurrent with this activity, the target house was being searched. While the sequence of the events depicted below is subject to debate, their occurrence is a matter of record.

As 1st Squad was searching the target house and the white sedan was being searched the first time, 3rd Squad displaced from their support-by-fire position and

moved northward to establish a vehicle check point (VCP) at the intersection of the north/south dirt road and the east/west hard surface road.

First Squad reported to the platoon commander via radio that they had found some contraband in the target house: AK-47s, aiming stakes for mortars, a flare pistol and propaganda material, among other items. The radio operator has testified that at this point the platoon commander said “These are the motherf_____ that were mortaring us.”¹⁰



Figure 5. Location of Incident

Taking the Iraqis into Custody

The platoon commander directed his men to flex-cuff the detainees; he ordered the corpsman to perform a second, more detailed search of the vehicle.¹¹ The corpsman spent the next ten to fifteen minutes carrying his orders out.¹²

The Intel Bn Marine and his interpreter completed interrogating the occupants of the white van, they joined First Squad at the sedan. There, they saw the two flex-cuffed occupants of the white sedan lying face-down.¹³ The Intel Bn Marine remembered the sedans' location as about eighty meters north of the target house, where he testified that the vehicle was being searched when he arrived. The interpreter testified that the vehicle had been "stripped searched, the back seat was out, all the doors were open and the two detainees were face down on the ground."¹⁴ At some point, the detainees were moved into a clearing about 100 meters from their vehicle where the Intel Marine and the interpreter questioned them. The two Iraqis stated that they were related to the residents of the target house.¹⁵

The Intel Bn Marine testified that during this period he returned to the platoon commander's location and recommended to him that the two detainees be taken back with them after the completion of the mission for further questioning.¹⁶ The radio operator has a different recollection and testified that the Intel Bn Marine "said that basically these two individuals are going to be let go because they had nothing on them. There is no proof they had anything to do with the house."¹⁷

The platoon commander said to the radio operator that he was thinking of having the two individuals go back and search their vehicle. He said it again. Then he clarified it, saying it again "Yes, I want these two individuals back to search their vehicle."¹⁸ The two detainees were moved from the site of their interrogation to their car.

The Intel Bn Marine and interpreter left the white sedan and moved to the target house to begin the process of exploitation. After a cursory walk-through of the house, they began interviewing women and children who had been taken from the house. There were no Iraqi men in the vicinity with the exception of the two detainees. The women confirmed the stories of the two detainees from the white sedan, stating they were members of the family.¹⁹

At this point, the occupants of the white sedan were described as cooperative; no weapons had been found on either their persons or in the vehicle. The women at the target house corroborated their story. The only finds worth mentioning were the coffee cans of nuts and bolts found in the trunk of the car.

The platoon commander directed the corpsman to take charge of the detainees. The corpsman moved them to the rear of the vehicle, separated them and placed them on their stomachs. He stood security on the detainees while the platoon commander and radio operator went to the target house. It could not be determined whether the platoon commander was informed that the residents had confirmed the two detainees' story. It was determined, however, that the residents had not been held hostage in their homes by insurgents.

The Incident

The platoon commander and radio operator returned from the house. Upon his return, the platoon commander directed the radio operator to get the Iraqis up from the ground and remove the flex cuffs; the radio operator did so using his medical shears. The platoon commander then told the corpsman he wanted the detainees to search the vehicle a second time. The corpsman moved the detainees to the left or west side of the vehicle, placing the older of the two Iraqis in the driver's door and the younger in the passenger door. The Iraqis had to be told several times to stop talking.²⁰

The platoon commander directed the radio operator and corpsman to take up security positions, leaving him alone with the two Iraqis. The corpsman testified that he heard the platoon commander say "stop" in Arabic and then again in English. He then heard shots being fired. The platoon commander fired two thirty round M-16 magazines into the two Iraqis using burst fire. The corpsman has testified that the platoon commander fired from a distance of four to five feet.

The corpsman turned during the firing and observed the platoon commander's rounds striking the Iraqis in their backs. He saw the Iraqis slump into the vehicle. The radio operator immediately faced about and saw the platoon commander firing into the

vehicle. After the platoon commander ceased firing, the corpsman checked the Iraqis' vital signs and informed the platoon commander that they were dead.

Prior to this firing, the only other shots that had been fired were the warning shots to stop the white sedan. The corpsman testified that throughout this entire action, the platoon had not received any fire. Elements of 3rd Platoon were established to the east, west, and north of the scene of the incident and others were at the target house.

The corpsman went to the rear of the vehicle. *"Don't worry about it," he said to the radio operator, "the blood is not on your hands, it's on the lieutenant's."*²¹ The corpsman testified that after shooting the two Iraqis, the platoon commander used his K-bar and rifle to break windows and lights of the white sedan and to flatten its tires.²² The radio operator also testified that the platoon commander did this, although he testified that it happened before the shootings.²³

The platoon commander later said that *"I didn't wait to see if there was a grenade. I didn't wait to see if there was a knife. And unfortunately, there are a lot of dead soldiers and Marines who have waited too long. And my men weren't going to be one of those dead soldiers or Marines and neither was I."*²⁴

The Intel Bn Marine testified that he heard the shots and went back towards the location of the white sedan. During this time, a second vehicle approached the scene from the north. The platoon commander ordered that vehicle, a brown sedan with several Iraqi laborers, to stop just north of the white sedan.

The Intel Bn Marine and the interpreter jogged north past the white sedan to assist the platoon commander with the Iraqis in the brown sedan. The interpreter described the scene at the white sedan. "They looked like they were on their knees. They were shot in their backs. One was in the front of the vehicle, the other one was in the back of the vehicle, facing the vehicle."²⁵ He later described the scene as "weird." "The rounds, sir -- there were too many rounds shot into those detainees, sir."²⁶

The interpreter testified that upon arriving at the brown sedan, he observed the platoon commander using his knife to flatten the tires of the vehicle. The platoon commander ordered Marines to move the new detainees to the north of their vehicle. (There were five or six Iraqi house painters in the vehicle. Painting equipment was found in their car and in the house where they had been working.) They were probably

twenty feet from the two dead Iraqis. Here, the Intel Bn Marine and his interpreter questioned them. The interpreter testified that the platoon commander had him tell the painters that “if any of them want to join the insurgency that same thing was going to happen to them as those bodies”²⁷ and then they were released. They drove away on flattened tires.

By this point, the platoon commander had placed a sign on the first vehicle, on the left side, the same side as the deceased Iraqis. It read “No better friend, no worse enemy.”²⁸ The first vehicle was not searched again. No effort was made to recover the remains of the dead Iraqis.

Recovering from the Mission

One half hour later, as a setting sun shone on the corpses of the two Iraqis, 3rd Platoon’s Marines began to retrograde back through the 81mm Mortar Platoon’s position by squads. Marines from 3rd Squad recovered from the VCP at the northern intersection.

The platoon sergeant and the 3rd Squad moved past the sedan and the two dead Iraqis. The platoon sergeant asked his lieutenant what had occurred. The platoon sergeant later testified that the platoon commander told him “Hey, they jetted towards me. I didn’t want to risk – you know – what we were told was going on at that house – he told me he didn’t want to risk chancing not shooting so he said he shot.”²⁹ The platoon sergeant later testified that the platoon commander told him that “he saw one of the guys reach for something under the seat – after being told to move somewhere else.”³⁰

The corpsman has testified that he removed all of the seats in his detailed search,³¹ but it is unclear whether they were later placed back in the vehicle. The platoon commander and his Marines passed back through the 81mm Mortar Platoon position. In a conversation with the First Lieutenant (1stLt) commanding the 81mm Mortar Platoon, the 3rd Platoon Commander reported that they had killed the two Iraqis. The 3rd Platoon Commander also related that he had left a sign out on the vehicles by the bodies. The 1stLt testified that he was surprised to hear about the sign, feeling it

was inappropriate and unprofessional. The 1stLt directed the 3rd Platoon Commander to have the sign picked up. The 1stLt testified that he felt the sign was the equivalent of a death card.³² The two officers had a second conversation where the 81mm Mortar Platoon Commander asked if 3rd Platoon had made any arrangements to recover the two bodies. The 3rd Platoon Commander had not and asked the 1stLt to do it. The 1stLt coordinated with local Iraqi forces to remove the bodies.³³

In an interview on MSNBC conducted by Stone Phillips, the 3rd Platoon Commander said “I put the sign on the car. Nowhere on the bodies, to show my Marines this could have been them that they would be dead and I took the sign down two minutes later.”³⁴

The Initial Report of Possible Misconduct and Investigation

Third Platoon’s Radio Operator testified that he described the 15 April incident to a lance corporal (LCpl) from the battalion command element “two to three months later.”³⁵ The LCpl initially reported the radio operator’s allegations to an NCO. The NCO told the LCpl to repeat his statement to the battalion sergeant major. The sergeant major reported the allegations to the battalion executive officer.³⁶ A formal investigation into the circumstances of the shooting was initiated. The LCpl testified that he felt he needed to report the incident because “It is going against our whole operation of SASO, Security and Stability Operations. And it is a war crime.”³⁷

In a written statement given as part of that investigation, the platoon commander said that the Iraqis had their backs to him and continued to speak to each other despite warnings to be quiet. “After another time of telling them to be quiet, they quickly pivoted their bodies toward each other. They did this simultaneously, while speaking in muffled Arabic. I thought they were attacking me and I decided to fire my M-16A4 service rifle in self-defense,” the statement said. In another statement, the platoon commander stated *“I believe that by firing the number of rounds that I did, I was sending a message that we were no better friend, no worse enemy. I kept firing until they stopped moving. It doesn’t take a lot of energy to pull a grenade pin. To protect the lives of my Marines, I would do it again in a moment.”*³⁸

The battalion staff judge advocate (SJA) testified that he first heard of the incident, many weeks after the fact, while the battalion was at Camp Fallujah.³⁹ He described how he was approached by the battalion commander and the division staff judge advocate (SJA), about a potential officer misconduct case. The SJA and the Deputy SJA formed a Reportable Incident Assessment Team to investigate the 15 April incident.

On 18 June, Naval Criminal Investigative Service (NCIS) personnel arrived at Camp Fallujah to interview the 3rd Platoon Commander.⁴⁰ On the night of 19 June, NCIS personnel interviewed members of 3rd Platoon.⁴¹

NCIS personnel returned on the night of Wednesday, 7 July, to continue the investigation of the 15 April incident. "In the morning I was sick in spirit, almost nauseous," said the platoon commander. "I just couldn't believe that after wasting those two f---s on the canal road this could possibly be happening. Was I supposed to let them kill me? In a splintered moment, they made a choice to fight for something they believed in. And it hadn't worked out so well for them."⁴²

Subsequent Actions

Following the NCIS interviews, the 3rd Platoon Commander was relieved of command of 3rd Platoon and assigned to the battalion operations section where he served as a watch officer pending the results of the investigation.

The platoon commander was charged with violations of Article 92 (Dereliction of Duty), Article 109 (Willful and wrongful damage to an automobile), Article 118 (Pre-meditated murder) and Article 133 (Willful and wrongful failure to safeguard the detainees) of the Uniform Code of Military Justice on 1 Feb 2005. When he informed of this by the battalion's executive officer, he said "Sir, they are charging me for disabling a bomber's car? Do they know how many Marines these things kill everyday?"⁴³ He wrote in his diary a day later "I had been officially labeled a murderer for defending myself against suicidal fanatics."⁴⁴

The Article 32 Investigation commenced on 26 April and ended on 1 May 2005. In his sixteen page report, the Article 32 investigating officer recommended dropping the

murder charges against the platoon commander. Instead, he recommended administering non-judicial punishment for damaging the two cars. On 27 May 2005, the Commanding General, 2d Marine Division declined to prosecute the 2ndLt, dismissing all charges and specifications.

The platoon commander resigned from the Marine Corps in August of 2005.

Questions for Discussion

1. Marine Corps Reference Publication 6-11B, *Marine Corps Values for Discussion Leaders*, describes honor as “The bedrock of our character. The quality that guides Marines to exemplify the ultimate in ethical and moral behavior; never to lie, cheat or steal; to abide by an uncompromising code of integrity; to respect human dignity; to have respect and concern for each other. The quality of maturity, dedication, trust and dependability that commits Marines to act responsibly; to be accountable for actions; to fulfill obligations; and to hold others accountable for their actions.”

- How should the Marine Corps investigate and adjudicate incidents such as those that occurred at Mahumadiyah may have occurred?
- Does the Marine Corps have an equal obligation to protect the reputation of a Marine accused of a crime or dishonorable behavior, someone possessing the presumption of innocence, and the reputations of those who have honorably brought forward questions about that Marine’s behavior?
- Can an action be lawful but dishonorable?
- What do we use as measures of honorable behavior and conduct if the Uniform Code of Military Justice is inadequate or unsuited to the task?

2. The combat environment forces Marines to make judgment calls with life-and-death results. It is an unfortunate fact of war that some will be wrong and innocent non-combatants will be hurt.

- How should Marine Corps’ leaders investigate and adjudicate questions that revolve around an officer’s presumption of truthfulness and personal integrity when there are credible allegations of wrongdoing?
- How should Marine Corps’ leaders treat an incident where there are questions as to whether an officer violated that special trust and confidence and acted in a manner contrary to the Marine Corps’ institutional concept of honorable behavior?
- How should Marine Corps’ leaders respond to allegations of criminal conduct by an officer, particularly when those actions occur in a combat environment?

- What burden does the Marine Corps bear to ensure that the concept of “special trust and confidence” is not eroded by excessive or over zealous oversight of a combat commander’s decisions?
- How should Marine Corps’ leaders evaluate judgment calls that raise legal or moral concerns?
- What is the responsibility to review a judgment call that turns out to be wrong after the event, perhaps illegal or immoral? Who bears that responsibility?
- How are judgment calls made in combat a different category?

3. Honorable behavior is the “bedrock of our character.” The enlisted Marines in this case study (a LCpl, Cpl, Sgt and SgtMaj) seem to have acted very honorably. They took a report of possible misconduct and communicated that information to the leadership of the battalion. They seem to have acted in accordance with the Marine Corps guidance to “be accountable for actions, to fulfill obligations, and to hold others accountable for their actions.”

- How should Marine Corps leaders encourage honorable behavior by Marines?
- What techniques will encourage honorable behavior and positively influence Marines and decrease the number of questionable actions on the battlefield?
- What role is there for training and education in fostering ethical and moral conduct?
- What other tools can Marine Corps’ leaders employ to foster an environment of high moral conduct in peace and war?
- How should Marine Corps leaders encourage Marines to come forward when they have allegations of wrongdoing?
- How can Marine Corps leaders protect whistleblowers from retribution?

4. Based on the presumption of innocence, strict rules of evidence and strong protections for the accused, the military justice system may not be the optimum forum for assessing the guilt or innocence of Marines accused of wrongdoing in a combat environment. Lack of forensic evidence, photographs, or eyewitnesses may frustrate efforts to investigate questionable actions by our combat forces.

- What other tools does a commander have to determine the truth and take appropriate actions?
- What can be done when there is a lack of court-martial quality evidence or witnesses that preclude prosecuting suspected illegal or dishonorable actions?
- Is the military justice system the best place to address questions of honor and integrity? What are the other options?

5. Defense attorneys explain that the number of rounds fired is irrelevant as long as the decision to apply deadly force in the first place was proper. In this case, fifty to sixty rounds were fired into two Iraqis from a distance of less than ten feet.

- At what point were legal, ethical, or moral lines crossed?
- How can we apply this to keep our own units on the “right side of the line?”

6. The complexity of the combat environment precludes supervision of every action and decision. In order to fight the “three block war,”⁴⁵ the chain of command reposes special trust and confidence in the judgment of leaders. It is contrary to that concept if the Marine Corps’ leaders excessively challenge the integrity of officers making critical decisions.

- When is it proper to challenge the integrity of an officer who may be unworthy of our special trust and confidence?
- What actions are available to the commander when he suspects one of his officers may have committed a dishonorable act or other violation of his or her personal integrity?
- What obligations does a commander have to investigate an incident whose circumstances seem suspect?
- How does a commander reconcile his concerns about an incident when he is assured by the officer on the scene that nothing improper occurred?

7. The 81mm Mortar Platoon Commander sensed as soon as he was briefed by the 3rd Platoon Commander that leaving the two bodies unrecovered with the sign on the car was “just not right.” He directed the sign be removed and then he coordinated for the recovery of the remains. The 1stLt seems to have immediately sensed that at least some of the 3rd Platoon Commander’s actions were wrong.

- What did the 1stLt see that the 3rd Platoon Commander did not?
- Should the 1stLt have taken any other actions, based upon his intuition?

8. The 3rd Platoon Commander has stated that he took the actions he did in part to show the enemy that “Marines were no better friend, no worse enemy.”

- How else might Iraqis perceive the platoon commander’s actions?
- Was the value of the desired message worth the risk of inadvertently sending the wrong message?

End Notes

¹ Article 32 Testimony, Verbatim Record of a Hearing Held in Accordance with Article 32 of the Uniform Code of Military Justice Conducted at Camp Lejeune, North Carolina, 26 to 30 April 2005, Convened by the Commanding General, 2d Marine Division, 135.

² Ilario Pantano, *Warlord* (New York: Threshold Edition, 2006), 331.

³ Article 32 Testimony, 310.

⁴ *Ibid.*, page 137.

⁵ Pantano, *Warlord*, 325.

⁶ Article 32 Testimony, 219.

⁷ Headquarters and Service Battalion, 2d Force Service Support Group Charge sheet co 2ndLt Ilario Pantano dtd 1 Feb 2005.

⁸ Article 32 Testimony, 220.

⁹ *Ibid.*, 139.

¹⁰ *Ibid.*, 221.

¹¹ *Ibid.*, 220.

¹² *Ibid.*, 221.

¹³ *Ibid.*, 310.

¹⁴ *Ibid.*, 95.

¹⁵ *Ibid.*, 310.

¹⁶ *Ibid.*, 312.

¹⁷ *Ibid.*, 222.

¹⁸ *Ibid.*

¹⁹ *Ibid.*, 96.

²⁰ *Ibid.*, 142.

²¹ Ibid. , page 150.

²² Ibid. , page 151.

²³ Ibid. , Coburn, 221.

²⁴ Pantano, *Warlord* , 332.

²⁵ Article 32 Testimony, 97.

²⁶ Ibid. , 99.

²⁷ Ibid. , 101.

²⁸ Ibid.

²⁹ Ibid. , 421.

³⁰ Ibid. , 428.

³¹ Ibid. , Gobles, 143.

³² Ibid. , 61.

³³ Ibid.

³⁴ Ilario Pantano interview with Stone Phillips, *Marine Charged with Murders of Iraqis*, Dateline NBC, 26 April 2005.

³⁵ Article 32 Testimony, 233.

³⁶ Ilario Pantano, *Warlord* , 230

³⁷ Article 32 Testimony, 334.

³⁸ Ilario Pantano interview with Stone Phillips, *Marine Charged with Murders of Iraqis*, Dateline NBC, 26 April 2005

³⁹ Article 32 Testimony, 295.

⁴⁰ Pantano, *Warlord* , 273.

⁴¹ Ibid. , 280.

⁴² Ibid. , 294.

⁴³ Ibid. , 353.

⁴⁴ Ibid. , 367.

⁴⁵ “The Three Block War” was used as a term of reference by Marine leaders following the end of the Cold War to assert the need for mental agility in Marines. The term described three blocks of a third world city; in the first block, Marines provide relief to those in need; in the second, Marines combat insurgents; in the third, they battle conventional forces. The construct highlighted the rapidly changing nature of conflict, and the need for Marines to prepare for uncertainty in the performance of duty.

Case Study 4: The Aviano EA-6B Gondola Mishap

Case Summary: A Marine EA-6B collides with a ski gondola in Italy, killing twenty occupants. Following the mishap, two of the aircraft's crew attempt to conceal evidence of their actions. Two of the four crewmembers are brought to courts-martial in an internationally volatile case for the Marine Corps and The United States.

Discussion Topics: Judgment, Unselfishness, Integrity

Target Audience: Company Grade Officers

Purpose: In more than one instance, this story illustrates individuals who use poor judgment, placing self-interest ahead of service to country. In the end, they failed to account for their actions, and they damaged American credibility in the international community. The study highlights the virtue of living in accordance with strong, internalized values by telling a cautionary tale of two aviators who failed to live by theirs.

Developed by: Lieutenant Colonel Gary Slyman, USMC

Discussion Leader Notes:

Table of Contents

Introduction	73
Tragedy in the Dolomites	74
The Aircrew	74
The Flight on 3 February 1998	75
Immediate Aftermath	77
Aviano: 4-8 February	78
Cherry Point, North Carolina: 4-8 February	81
The Decision to Destroy the Tape	82
Admission of Guilt	83
Questions for Discussion.....	86
End Notes	88

Illustrations

Figure 1. EA-6B Crew Stations	76
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Introduction

On 3 February 1998, a Marine EA-6B four-seat electronic warfare aircraft sliced through aerial cables supporting a ski gondola in the Dolomite Mountains of Calvalse, Italy, killing twenty people. On 12 March 1998, a Command Investigation Board, headed by a Marine Corps major general, concluded that aircrew error was the cause of the mishap. The four aircrew members were charged with twenty counts of negligent homicide and several lesser offenses. Two Article 32 Investigations¹ were held---one for the two back-seat crewmembers in May 1998, and one for the two front-seat crewmembers in June 1998. Charges were dropped against the back-seat aircrew. The front-seat crewmembers were brought to a General Court Martial. The commanding officer (CO), executive officer (XO), operations officer, and Director of Safety and Standardization were subjected to a Nonjudicial Punishment hearing in August 1998 for systemic errors in the squadron. On 6 August 1998, the CO was relieved of command.

Approximately one week after the CO was relieved, it came to light that the right-front seater had videotaped portions of the flight, but had later destroyed the tape. The revelation came from one of the back-seaters after he was granted immunity and ordered to testify. Consequently, an additional charge of conduct unbecoming an officer was brought against the two front-seaters.

In February 1999, the General Court Martial for negligent homicide commenced against the pilot. He was found not guilty of all charges. The charges of negligent homicide were subsequently dropped against the right-seater. In March 1999, the General Court Martial for conduct unbecoming an officer was convened against the right-seater for the destruction of the videotape. He pleaded guilty. His sentence was dismissal from the Marine Corps.

The pilot's trial followed shortly thereafter. He pleaded not guilty to the charge of Conduct Unbecoming an Officer. He was found guilty and sentenced to six months in confinement and dismissed from the Marine Corps.

The narrative that follows is the story of the right front-seater, Captain (Capt) Joe Schweitzer, and the events leading up to his court martial for charges of conduct unbecoming an officer.

Tragedy in the Dolomites

Marine Tactical Electronic Warfare Squadron-2 (VMAQ-2), was deployed in support of Operation DELIBERATE GUARD, flying its EA-6B Prowlers on missions over Bosnia-Herzegovina. Only a week remained before the squadron would return home from this six-month deployment.

On 3 February 1998, a crew of four Marine captains took off from Aviano, Italy in an EA-6B to conduct a low-altitude training mission. On the last leg of the training route, the pilot spotted a cable in front of him and saw a yellow flash to his right. He shoved the Prowler's joystick full-forward in an attempt to dive under the cable, but knew he'd failed when he heard and felt a loud thud. The right seater immediately commanded "climb, climb, climb!"² Expecting the worst, the two back-seaters immediately prepared to eject from the crippled Prowler. After a few tense moments, the crew determined the aircraft flyable in spite of the damage. Two cables supporting a ski gondola had sliced into the right wing, creating two large holes and taking off a portion of the vertical stabilizer. The cables snapped; the suspended gondola fell 370 feet to the ground, killing twenty people.

The Aircrew

Capt Richard "Trash" Ashby from Mission Viejo, California was the pilot on this mission; he was on his second deployment to Aviano. His first deployment was with the same squadron from March to September 1997, enforcing the no-fly zone over Bosnia-Herzegovina during Operation DECISIVE ENDEAVOR. This deployment would be his last as a Prowler pilot since he was recently selected to transition to F/A-18 Hornets. Although he had fewer than 500 hours in the Prowler, Capt Ashby had a reputation as a talented pilot.

Ashby's crew consisted of three electronic countermeasures officers (ECMO's). ECMO-1 sits to the pilot's right, and has the duties of a copilot and navigator. ECMO-2 and 3 sit in the back, and operate the aircraft's weapon systems--the radar jamming pods hung under the wings, managed through the onboard computer system.

ECMO-1 was Capt Joe "Guiseppe" Schweitzer, a 1989 Naval Academy graduate. The well-respected officer and aviator would break 1000 hours in the Prowler on his next hop. As the squadron logistics officer, he was the only captain in the squadron serving as a department head, normally a major's job. Capt Schweitzer was an experienced ECMO and officer, having completed three deployments previously. He had been assigned to the squadron two months prior to this deployment, after returning from a one-year forward air controller tour with a Marine tank battalion. Schweitzer had plans to leave the Marine Corps and go to business school.

The day before the incident, ECMO-2, Bill "Rainman" Raney, had been promoted to captain. He was the only married officer on this flight and was just completing his first deployment.

ECMO-3 was Chandler P. "CP" Seagraves, a second-generation marine aviator from Indiana. Seagraves was a member of VMAQ-2's sister squadron, VMAQ-4. As part of VMAQ-4's advance party, he was temporarily assigned to VMAQ-2 to facilitate his squadron's relief of VMAQ-2 in Italy. In order to familiarize Seagraves to the local area, VMAQ-2's operations officer assigned him to the flight during the evening prior. Seagraves was not introduced to the rest of the crew until mission brief.

The Flight on 3 February 1998

The crew met at noon and briefed the flight in a portable trailer that served as VMAQ-2's ready room. They dressed in their flight gear and boarded the squadron's "breadtruck," where a lance corporal (LCpl) drove them on the mile-and-a-half ride to their waiting Prowler. The preflight was uneventful, but the aircrew was temporarily delayed when they asked the driver to return to the ready room and retrieve two 8mm videotapes for Capt Schweitzer's use during the flight. The driver willingly did so.

Following the driver's return, the crew performed their final checks, managing to take off at the scheduled time.

Enroute to the low-level entry point, Schweitzer had difficulty operating the video camera. After several minutes, Ashby asked him to put it away in order to concentrate on the approaching low-altitude route; Schweitzer complied. Unknown to the back-seaters, Schweitzer began to film again during the first leg of the route. He videoed several minutes of the low-altitude flight as Ashby maneuvered and pulled G's, but decided that filming was a nuisance and again stowed the camera. He did not attempt to use it again until they cruised wings-level at 5,000 feet over Lake Garda. Unsure if he was operating the camera correctly, Schweitzer pointed it at his own face and smiled.³

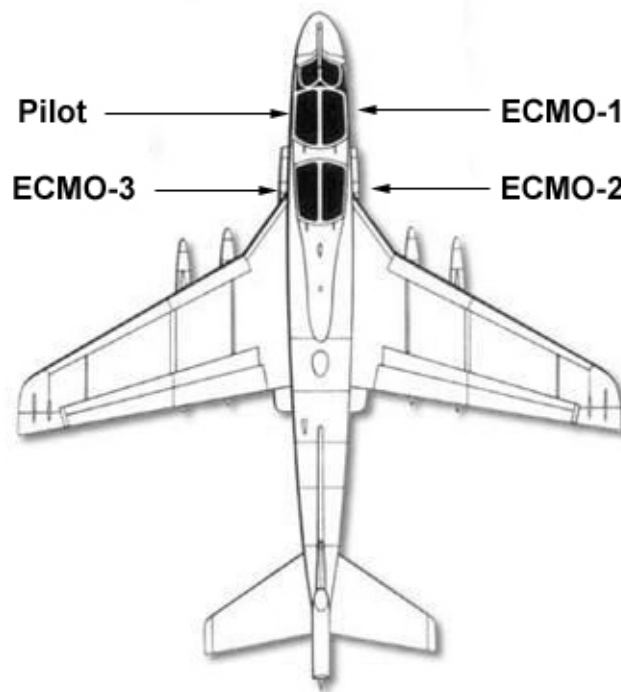


Figure 1. EA-6B Crew Stations

The weather was slightly hazy, but fine for the low-level flight. They were on the sixth, final leg of the route with the exit point, a mountain peak, in sight when they hit the cable. After the collision and the desperate climb to achieve separation from the ground, Ashby slowed the aircraft. Luckily, they were only sixty miles from the airfield. Nearing Aviano, Ashby lowered the landing gear handle and heard the thud, thud, thud of the

landing gear extending beneath the aircraft. He breathed a sigh of relief when his instruments indicated they had fully extended.

Testing the aircraft at landing airspeed, the aircrew determined they were committed to landing the Prowler at over 200mph without using its flaps, and to stop it without wingtip speed brakes or wheel brakes. The crew declared an emergency with Aviano's control tower, requesting to use the airfield's arresting gear.⁴ Following a visual approach to touchdown, a sharp tug told the crew they had successfully caught the arresting gear.

Having brought the damaged Prowler to a stop, Ashby shut the aircraft's engines down; the two back-seaters got out as rapidly as possible by jumping from the back of the wings. Raney was in such a rush that he landed awkwardly, breaking a bone in his heel. About seventy-five yards in front of the aircraft, the back-seaters gathered and turned to wait for the front-seat crew, who were still in the cockpit.

While shutting down all of his systems, Schweitzer looked at the video camera in front of him. "Let's take the tape,"⁵ he said to Ashby. He then handed the pilot a blank tape to swap with the tape in the camera. After several seconds, Ashby and Schweitzer joined the back-seaters outside the aircraft. Squadron maintenance Marines joined the crew and waited to tow the aircraft off the runway. No one said anything about the tape.⁶ The flight was over, with the aircraft safely on deck, its crew unharmed. Unknown to them, the world they landed on was far more hostile than the one they left.

Immediate Aftermath

The aircraft had struck the cables of a ski gondola support system at 15:12, and landed safely around 15:35. Following the landing, the crew were transported to the squadron's operations spaces. The front-seat crew followed the commanding officer to his office to debrief him while still dressed in their flight gear. They told him they thought they hit a wire and where they thought it was on their chart. Accompanied by the squadron flight surgeon, they were transported to the Air Force hospital for a mandatory post-mishap flight physical. The squadron was just beginning to get reports on the

mishap's severity, but the crew remained unaware. The crew acknowledged they saw a yellow flash prior to the thud, but said they did not know it was a gondola.

The four aviators were ushered into a hospital waiting room, while civilians waiting for appointments were shuffled to another room. When an orderly turned the television off, the crew pressed the flight surgeon for information, but the surgeon said nothing. At 18:30, their CO entered and told them that fourteen people were killed in a gondola after it crashed to the ground. Stunned, one member went off by himself to pray. Another put his head in his hands. All were visibly shaken.⁷

Back at the airfield the Prowler was towed from the runway to a normal parking spot and roped off. Its damaged tail could be seen from the main road outside the base, where local news media had already gathered to photograph it. The local *carabinieri*, (the Italian paramilitary police), claimed jurisdiction over the aircraft as it was now considered evidence for a crime committed in Italy. When VMAQ-2's maintenance Marines attempted to tow the aircraft to a hangar to remove it from public view, the Italian base commander ordered that it remain where it was.

Dismissed by the surgeon, the crew returned to their quarters and waited for the squadron safety officer's call. Beginning at 2100, each aircrew member gave a taped statement to the squadron safety officer. The statements were privileged information, for use only in the safety investigation; only the safety officer was present while the individual crew members spoke.

Aviano: 4-8 February

The crew's sleepless night ended with the confirmation of twenty deaths -- nine women, ten men, and one child, from Germany, Hungary, Poland, and Italy. A second gondola had been left dangling from the severed cable; In an otherwise empty car, the operator survived.

The aircrew continued with their flight physicals. The four traveled to the hospital via a back gate, in civilian clothes, in order to avoid protestors at the main gate. To reach the hospital, they had to travel off base through a portion of the town of Aviano. During their physicals, they were called to return to 31st Fighter Wing Headquarters in

their flight suits to face the Italian Magistrate (equivalent to an American prosecutor). In the Wing Headquarters building, the aircrew met with Italian defense attorneys (provided by the 31st Fighter Wing to defend them in Italian court.) At this meeting they learned they faced potential conviction and imprisonment in Italy.

One by one, the aviators were called to tell their story to the Magistrate. Accompanied by his Italian lawyer, each made what he thought were confidential statements to the Magistrate. One at a time, each Marine found himself alone in a room of Italian officials.

When they finished making their statements, the crew signed what they believed was a charge sheet for involuntary manslaughter. Upstairs, they were directed to sign for the death certificates of all of the victims. Capt Schweitzer recalled this as a very “humanizing” event for him. Seeing the names, ages, and hometowns of the deceased “...was almost like seeing a picture of somebody...and that was a difficult thing to see.”⁸ Now extremely frightened, the crew left the building and found no one waiting for them. They called the squadron for a ride back to VMAQ-2.⁹

Their four military defense attorneys – a Marine captain as senior defense counsel, two Navy lieutenants, and one lieutenant junior grade – also arrived in Aviano from Naples late that evening. The squadron gave the aircrew a separate 20x30 foot trailer to work with their lawyers.

The squadron Aircraft Mishap Board¹⁰ had been convened the night of the mishap, but one day later, it was clear that a much higher-profile investigation was required. The squadron board members were limited to gathering evidence to present to a visiting team of investigators.

The day following the interviews with the Italian magistrate, the international press carried many quotes from the aviators’ sessions with the magistrate. Many stories characterized the aircrew as “Rambos,” “Murderers,” and “Cowboys.” President Clinton spoke with the Italian Prime Minister, expressing his condolences for the loss of life, and promising a full investigation. The smashed gondola in the valley, with the blood still in the snow, appeared frequently on CNN.

In the predawn hours of 5 February, the three colonels, three majors, and one captain on the advance party for the Marine Corps’ Command Investigation Board (CIB)

arrived in Aviano. Three investigations were to be conducted simultaneously to determine the cause of the mishap. The Marine Corps conducted a CIB, the Italian magistrate a criminal investigation, and the Italian Air Force a privileged safety investigation. Because of the mishap's severity and the requirement for complete transparency, Commander, US Marine Corps Forces Atlantic determined that the normal privileged safety investigation, called an Aviation Mishap Board (AMB), would be delayed or satisfied by the Command Investigation Board.

In a press conference that same day in Aviano, a Marine Corps brigadier general stated that the aircraft hit the cable while flying within the structure of an authorized low-altitude route, which contradicted a previous statement by the Italian Defense Minister.¹¹ Following the general's departure the following day, the 31st Fighter Wing issued an apology for his statement.¹²

Within several days of the mishap, the aircrew attempted to convey their sympathy for the victims' families in a letter. They presented the letter to the Marine public affairs officer, who had traveled to Aviano to support the investigation. He refused, saying he worked for the Marine Corps not the aircrew, so they had to go to their Italian defense counsel to get the letter released to the families of the victims.¹³

Within a few days, the media were pressing the Marine Corps for the names of the aircrew. The crew had decided not to give permission to release their names because they wanted to protect their families. A senior officer in their squadron told the aircrew to notify their families about their involvement in the mishap, or run the risk that their families would find out by watching CNN. They acquiesced, and their names were made public on 6 February.¹⁴

The crew also learned that the Italian Magistrate had filed criminal charges against the CO and another squadron pilot. The CO was charged with the same offenses as his aircrew. The charges against the squadron pilot originated from his non-cooperative conduct in the interview with the Magistrate.¹⁵

In the days immediately following the mishap, the crew was escorted at all times to ensure they did not attempt suicide. By the third day, the flight surgeon had prescribed medication to help them sleep. They had support, but felt distanced from the squadron, describing themselves as "a leper colony."¹⁶

Cherry Point, North Carolina: 4-8 February

The mishap in touched off a series of events at VMAQ-2's home at Marine Corps Air Station (MCAS), Cherry Point, North Carolina, the home to all four Marine Prowler squadrons and their parent command, the 2d Marine Aircraft Wing (2d MAW). Emails and telephone traffic reported events as they unfolded.

When VMAQ-2 deployed to Aviano, it relieved its sister squadron, VMAQ-3, from a six-month deployment. During their deployment, VMAQ-3's aviators had also flown several low-level training flights. On one flight the VMAQ-3 aircrew videotaped the same low-level route that the VMAQ-2 mishap occurred on, including the cockpit audio. The video was popular; copies of it were distributed throughout the squadron. On 4 February, VMAQ-3's squadron commander called an All-Officer Meeting to discuss the gondola mishap. During this meeting he brought up VMAQ-3's videotape, stating that anyone possessing a copy of the videotape needed to make it "disappear."¹⁷ After the meeting, one of the VMAQ-3 officers approached the CO and let him know that his comments sounded like obstruction of justice. The CO reconvened his officers and stated that the videotapes were to go through him to higher authorities. One of VMAQ-3's officers reported the CO's remarks to the Wing staff.

On 5 February, after hearing the initial reports from Italy and learning about VMAQ-3's unauthorized videotape, the Commanding General (CG), 2d MAW addressed all the officers of the EA-6B community at Cherry Point. He acknowledged that he could possibly be given convening authority (the person with legal jurisdiction) over the Aviano proceedings, and should not discuss the case. He then read headlines about the incident and implied that the mishap was caused by aircrew errors. He accused the community as a whole of violating flight rules on low-level flights, and stated that if the Marine Corps found any aircrew violating flight rules, they would be punished. On that same day he began an investigation at Cherry Point to determine trends in adherence to flight rules in the EA-6B community. As part of the investigation, all EA-6B aircrew were read their legal rights and interviewed by a military lawyer and

the assistant wing commander, a brigadier general. The results of this investigation were ultimately provided to the Aviano Command Investigation Board.

On 6 February the CG, 2d MAW relieved the VMAQ-3 CO.¹⁸ The VMAQ-3 videotape showed the squadron had violated flight rules with the CO in the aircraft.

The Decision to Destroy the Tape

As they prepared to egress their crippled Prowler on 3 February, Ashby and Schweitzer removed the tape from Ashby's videocamera and left in its place a blank tape. Ashby had possession of the first tape and hid it in his room. He neither viewed nor talked about it for several days. Both front-seaters knew the tape would become evidence during the impending investigations, which by the second day included an Italian criminal investigation. Schweitzer thought that his commanding officer would have been upset by the use of the video camera, even though there was no specific prohibition on using it. Prior to the investigation team's inventory of the cockpit, he approached his commanding officer and one other senior officer in the squadron, and mentioned that there was a video camera in the front cockpit, leaving them with the impression it was not used during the flight.

On 6 February, the two front-seaters approached Seagraves (ECMO-3) and told him they had removed the tape from the cockpit. They then asked him what they should do with it. He asked, "Well what's on it?" After they said they didn't know, he responded, "I would get rid of it if I were you," and then walked away.¹⁹

Schweitzer asked Ashby for the tape. Ashby protested because he wanted to view it. Schweitzer persisted. They discussed the possibility that the tape showed the "flaperon roll" they had made while crossing one mountain ridge inverted. They knew the maneuver was authorized, but thought the Italians would misinterpret it. Schweitzer added: "...the Italians will eat you alive." Hearing that, Ashby gave up the tape. Schweitzer hid the tape in his room, and never viewed it. Several days after taking the tape from Ashby, Schweitzer destroyed it in a bonfire.²⁰

The tape was not mentioned again until approximately four months after the mishap, when Schweitzer and Seagraves had a conversation in their office spaces at

MCAS Cherry Point. Seagraves said that if the question of the videotape came up, he was going to tell the truth. Schweitzer responded that that was what he expected him to do.²¹ In Seagraves' testimony, he admitted to advising Schweitzer and Ashby to get rid of the tape.²²

The existence of the videotape became publicly known in mid-August, more than six months after the mishap. Seagraves was granted immunity and ordered to testify. His statements to investigators after the grant of immunity revealed the existence of the tape. Prior to this time, only Ashby, Schweitzer, Seagraves and their defense attorneys knew of the tape. Raney never knew the tape was taken from the cockpit. The only reason Seagraves knew was because Ashby and Schweitzer asked him for advice on what to do with it.

At a general court martial in March 1999, Capt Schweitzer pled guilty to conduct unbecoming of an officer, conspiracy to obstruct justice in the destruction of the videotape.

Admission of Guilt

Capt Schweitzer chose to accept the consequences for his actions in destroying the videotape by pleading guilty. Following the advice of his legal counsel to protect his rights as the accused, Schweitzer remained silent for over a year and was presumed innocent. Some legal officials even pressured him to plead not guilty, even though he knew he was. At his sentencing hearing, the Judge gave Captain Schweitzer the following advice:

Even if you believe you are guilty, you still have a legal and moral right to enter pleas of not guilty, and to require the government to prove its case against you, if it can, by legal and competent evidence beyond a reasonable doubt. If you were to plead not guilty, then you would be presumed under the law to be innocent; and only by introducing evidence and proving your guilt beyond a reasonable doubt, could the government overcome this presumption of innocence.²³

Schweitzer pled guilty to charges of “Conduct Unbecoming an Officer and a Gentleman” for conspiracy to obstruct justice for the destruction of the tape. With his guilty plea the prosecution did not have the burden of proving his guilt. The jury’s only task was to determine the sentence for his actions.

The prosecution’s case centered on confirming Capt Schweitzer’s guilt. Their approach was to ensure they jury understood he knowingly and willingly destroyed the tape to obstruct the Italian criminal investigation. The primary witness who made the case for the prosecution was Capt Seagraves.

The defense used numerous affidavits and witnesses to attest to the character and integrity of Capt Schweitzer. He also took the stand himself to tell his story. Since the tape was destroyed without anyone viewing it, nobody can say what was on it. According to his testimony, the tape could have contained at most a few minutes of low-level flying, an inverted ridge line crossing, a picture of Schweitzer’s smiling face, and some high-level flying. Schweitzer explained his reasons for destroying the tape: “All I could think about was my face superimposed next to the blood in the snow.”²⁴

When questioned about what he thought of his actions, his response was: “It was the wrong thing. It was terribly wrong. It’s not right as a person. It’s not right as a Marine Corps officer. It’s not right as Joe Schweitzer. It was wrong.”²⁵ In the face of numerous direct and cross-examination questions, he repeatedly gave similar answers. He took the tape, he deceived those around him and the investigators, and he pleaded guilty, accepting responsibility for his actions as a Marine officer.²⁶ Ultimately, he realized that this act not only undermined his integrity, but also his case, saying “I knew it was a wrong act. It was a stupid thing to do. I wish I still had [the tape] because I think it would answer a lot of questions that everybody wants answered, basically my humiliation, that I tried to prevent, is what I’m dealing with right now.”²⁷

Schweitzer could have received a maximum sentence of forfeiture of all pay and allowances, dismissal from the service, and other punishments as adjudged, such as reprimand, loss of seniority, or restriction.²⁸ On 2 April 1999, Schweitzer was sentenced to dismissal from the Marine Corps.²⁹

Shortly after Capt Schweitzer’s sentencing, Capt Ashby went to trial for his actions concerning the videotape. He pleaded not guilty to the charges of “Conduct

Unbecoming an Officer and a Gentleman.” He was found guilty and sentenced to six months confinement and a dismissal from the Marine Corps. Capt Ashby served his sentence in the brig at Camp Lejeune, North Carolina. In June of 2007, the records of both courts martial were returned by the Navy-Marine Corps Court of Criminal Appeals for appellate review related to the SJA’s appearance of advocacy for the prosecution. Capt Seagraves and Raney remain on active duty in the Marine Corps

Questions for Discussion

1. A reoccurring theme in this case is integrity. Captains Ashby, Schweitzer, and Seagraves, the VMAQ-2 CO and the CG, 2d MAW demonstrated contrasting views on integrity.
 - Briefly outline any breeches of integrity made by the above officers. Support your accusation with an alternate, ethical course of action.
 - Briefly outline any honorable actions made by the above officers. Support your position by explaining why that action was an honorable one.
 - Pay specific attention to Capt Schweitzer's actions throughout the incident. Based only on his actions in this case, why do you consider him an honorable or dishonorable officer?
2. Although there was no way of knowing if the camera had recorded any portion of the flight when the aircraft landed, Captains Schweitzer and Ashby swapped the tape in the camera with a blank one.
 - Did Captains Schweitzer and Ashby act responsibly when they switched and removed the video tape in the aircraft after landing or should they have left it inside the camera?
 - At what point should have either Capt Ashby and/or Capt Schweitzer acknowledged the tape's existence to investigators?
 - Which investigatory team(s) should they have approached with this information? Why?
 - Should they have turned over the tape to the investigatory team, or was the decision to destroy the tape the right one?

3. VMAQ-2's CO and the CG, 2d MAW were faced with similar situations: men under their command were involved in an accident resulting in the loss of civilian life overseas.

- What actions, if any, were the commanding officers duty bound to take?
- How would you have acted differently if you were the VMAQ-2 CO or would you have acted the same? Why?
- How would you have acted differently if you were the CG, 2d MAW? Why?
- Of these two officers, whose leadership actions do you praise? Why?
- If you were in command, would you allow your men to be prosecuted by Italian courts? Why or why not?
- If not, what steps would you take to ensure their immunity from the Italian legal system?
- If so, what steps would you take to ensure justice for your men?

End Notes

¹ An Article 32 Investigation is a pretrial investigation to determine whether a case should be recommended for forwarding to a general court-martial. It is similar to a grand jury investigation in civil law.

² Peter Wilkinson, "Easy 01 has an Emergency," *Rolling Stone*, 10 Dec 1998, 77.

³ Record of Trial (ROT) *U.S. versus Captain Joseph P. Schweitzer* General Court-Marital, 2752-52753,3432-3436, 3456.

⁴ An arrested landing is when an aircraft uses its tailhook, which is attached to the rear of the aircraft, to catch a cable strung across the runway to stop the aircraft.

⁵ ROT *U.S. versus Captain Joseph P. Schweitzer*, 3442.

⁶ Ibid.

⁷ Ibid. , 3445.

⁸ Ibid. , 3450.

⁹ Ibid. , 3307, 3348-3349.

¹⁰ An Aircraft Mishap Board (AMB) is a standing panel of officers within the squadron appointed to investigate an aircraft mishap and determine its causes.

¹¹ "U.S. pilot on first flight over Dolomites when hit ski-lift" *Agence France Presse*, 5 February 1998, Internet.

¹² ROT, *U.S. versus Captain Joseph P. Schweitzer*, 3451-3453.

¹³ Ibid. , 3447-3448.

¹⁴ Ibid. , 3452.

¹⁵ Ibid. , 3453.

¹⁶ Ibid. , 2765, 3458.

¹⁷ Court Order and essential findings on remaining phase 1 motions, Captain Richard Ashby, USMCR and Captain Joseph P. Schweitzer, USMC, 8 January 1999.

¹⁸ ROT, *U.S. versus Captain Joseph P. Schweitzer*, Vol 46/51 AE LXXX, 4 of 69.

¹⁹ Ibid. , 3457.

²⁰ Ibid. , 3458, Vol 42/51 PE 22 Stipulations of Fact ,1-8.

²¹ Ibid. , Vol 49/51 AECLII, 37.

²² Ibid. , 3324.3342.

²³ Ibid. , 2723.

²⁴ Ibid. , 3457.

²⁵ Ibid. , 3459.

²⁶ Ibid. , 3440-3480.

²⁷ Ibid. , 2753.

²⁸ Ibid. , Vol 51/51 AE CCXXXIV.

²⁹ Ibid. , 3438.

Case Study 5: Accountability and Responsibility: Marines at 29 Palms

Case Summary: Marines in a fast-paced Combined Arms Exercise make broad assumptions about personnel accountability. They leave a Marine stranded in the desert, where he dies.

Discussion Topics: Judgment, Dependability, Proficiency

Target Audience: All Marines

Purpose: The Marines in Jason Rother's chain of command made errors of commission and omission, each seemingly innocuous, most with plausible excuses. None of them intended to let one of their own perish alone, but that is what happened. Written large, this case study focuses on the core value of commitment and the impact of climate on individual behaviors. The Marines of Rother's battalion largely operated under the assumption that troop accountability and welfare was somebody else's business. Rother paid the price for that assumption.

Developed By: The information provided in this case study is drawn directly from the command investigation and the Naval Criminal Investigation Service investigation into the death of Lance Corporal Jason Rother.

Discussion Leader Notes:

Table of Contents

Introduction	91
The Incident	92
Discussion Questions:.....	99
Second Endorsement on Col Angel's Investigation Report	101

Findings of Fact:

572. That the only clues of substance were his abandoned 782 gear, the rock arrow at the PLS that indicated that LCpl Rother may have headed in an easterly direction.

629. That at approximately 1130 on 4 Dec, Capt Lavender spotted in a prominent wash, a dark patch on the desert floor that proved to be LCpl Rother's utility trousers.

633. That about 10 meters up the wash, LCpl Rother's weapon and web gear were found in what appeared to be a man-made depression.

641. That at about 100 meters along the same track, a dark spot believed to be sand saturated with body fluids was found.

642. That at about 1215, 4 Dec 88, first skeletal remains began being found.

643. That at 1400 the San Bernadino county Coroner was flown in by helicopter, and took custody of the skeletal remains.

647. That the lower jaw was subsequently used by the coroner to make a positive identification of the remains of LCpl Rother.

648. That Lance Corporal Jason J. Rother USMC is dead.**Introduction**

Leaders of the 2d Marine Regiment had driven a search that encompassed 140 flight hours in UH-1s, OV-10s, KC-130s and other aircraft, as 1,758 Marines combed the terrain. The California Rescue Dog Association mounted a search with their trained dogs. The National Park Service and San Bernardino Sherriff's Department contributed. All tried to find Lance Corporal (LCpl) Jason Rother in the early days of September 1988. All failed. Sooner or later, all regarded the search as futile – all, except for Captain (Capt) Bryan Lavender.

Lavender had been searching the desert for months in an effort to uncover the explanation to Jason Rother's mysterious disappearance. Together with Mr. Paul Henry of the National Park Service, Lavender developed a plan to comply with Commanding General (CG), Marine Corps Air Ground Combat Center (MCAGCC) TwentyNine Palms, California direction to mount a second search, to be named "Desert Search," for Rother

in October, 1988. In contrast to prior efforts, Lavender developed a phased plan that would enable follow-on searches, should Desert Search fail. On 6 November 1988, after expending 6,396 man-hours in 354.5 square miles, Desert Search ended without solving the mystery of Jason Rother's disappearance.

Following Desert Search, the Sierra Madre Search and Rescue (SAR) Team conducted a third search for LCpl Rother a week later, but it too was inconclusive. Bryan Lavender sought and received approval to conduct San Bernardino County's December SAR training as a continuation of Desert Search. This training, conducted during the first days of December, 1988, would discover Jason Rother's remains and uncover the story of his death.

The Marines in Jason Rother's chain of command made errors of commission and omission, each seemingly innocuous, most with plausible excuses. None of them intended to let one of their own perish alone, but that is what happened.

The Incident

Having completed basic training, LCpl Jason J. Rother reported to Battalion Landing Team (BLT) Third Battalion, Second Marine Regiment (3/2) and was assigned to the First Squad, Second Platoon, K Company, on 10 July 1988. The BLT was preparing for desert training; it was the Ground Combat Element for Regimental Landing Team 3/2. Attached to BLT 3/2 was B Company, 2d Tank Battalion with artillery from 1st Battalion, 10th Marines (1/10) in direct support.

On 8 August, Kilo Company received a class on the "introduction to desert survival." The purpose of the class was to acquaint the individual Marine with desert survival techniques. The first general point made was the requirement for personnel accountability.

The training commenced on 29 August, at the MCAGC Center, Twentynine Palms, California. On day two of the combined arms exercise (CAX), the BLT received an order to use the cover of darkness to reposition forces for an attack to the northwest. The order required the BLT to conduct a twentyone-mile unilluminated motor march while maintaining light and noise discipline. Emplacement of route guides and quartering parties (advanced parties) was permitted before dark. Lieutenant Colonel

92

(LtCol) Robeson, Commanding Officer (CO), BLT 3/2, detailed one of his subordinates to emplace the checkpoint guides and another to recover them. Expecting the two would coordinate as necessary for the return of the guides, LtCol Robeson issued no formal coordinating instructions. Robeson further assumed the individual companies would ensure the return of their Marines. In retrospect, Robeson stated he “could have been more directive about how the Marines were to be returned.”

First Lieutenant (1stLt) Allen V. Lawson, the Heavy Machine Gun Platoon Commander of Weapons Company, 3/2, was tasked with conducting motor march route reconnaissance and simultaneous guide emplacement. Standard operating procedures (SOP) required two route guides per station. Lawson would get two to four Marines from each of the five companies within the battalion. A total of fourteen men would make up his route guide detail.

Capt Edwards, the Battalion Logistics Officer, was tasked with picking up checkpoint route guides with the last vehicles in the logistics train. Earlier that day he asked 1stLt Lawson to provide him with a by-name roster of those Marines he would be picking up at the checkpoints.

1stLt Lawson had filled only eight of the fourteen route guards' billets as the required departure time arrived. Darkness was approaching and Major (Maj) Holm, the battalion executive officer (XO), was concerned over possible delay to the operation. Holm confronted 1stLt Lawson. “It’s almost dark; what are you still doing here?” asked Holm.

As the two spoke, LCpl’s Adamson, McAdams, Key and Rother of Kilo Company waited. Of his own initiative, LCpl Adamson checked the canteen of each Kilo Company Marine for adequate water level.

“I’m the Lieutenant and you’re the Lance Corporal.”

Whether or not 1stLt Lawson informed Maj Holm of his personnel shortages remains unclear. Maj Holm’s words, however, clearly reflected a sense of urgency. “If you don’t leave now, you’ll get as lost as we will without road guards,” said Holm. 1stLt Lawson

departed shortly after the exchange with six billets unmanned, and having failed to provide Capt Edwards with a roster or even a head count of the Marines that Edwards would be tasked to retrieve after completion of the night motor march.

At Check Point #1, LCpls Rother and Key dismounted the vehicle. When 1stLt Lawson directed Key to reboard the vehicle, LCpl Adamson cited instructions from his command to deploy road guards in pairs. 1stLt Lawson replied "I'm the Lieutenant and you're the Lance Corporal," silencing LCpl Adamson; LCpl Key reboarded. Without any further posting guidance or pick up directions, LCpl Rother was left alone. It was the last time his fellow Marines would see him alive.

BLT 3/2's movement required 1/10 to move as well. The two battalion commanders had planned to travel on separate routes. However, Lawson's reconnaissance revealed impassible points; 3/2 would need to modify its route. Without coordination, 3/2 and 1/10 would employ along much of same route on the same evening.

The driver of BLT 3/2's pick-up vehicle understood that he was to recover pairs of route guides identified by the glow of their chemical light sticks. He did not know the exact number of personnel to pick up or their precise locations.

Many of the drivers moved at high speeds in order to maintain visual contact with the vehicles in front of them. These high speeds created a great deal of dust that restricted visibility. One road guide said that just before he was picked up that he could see Rother's chemlite, but the platoon sergeant said that he did not see it. LCpl Key boarded the recovery vehicle alone, and did not indicate to anyone that the road guard with whom he was supposed to be paired, LCpl Rother, was not among them. Collectively, they assumed that Rother was aboard another vehicle. The last vehicle in the convoy headed home, leaving LCpl Rother in the desert alone with only the most basic tools for survival.

The motor march concluded early in the morning of the 31 August. At the assembly area, 1stLt Lawson questioned Staff Sergeant (SSgt) Dozier from the recovery vehicle regarding the number of road guards that had been picked up. The conversation, paraphrased from the Rother Investigation's findings of fact, illustrates the potential for confusion:

Lawson: *How many road guards did you pick up?*

Dozier: *Six*

Lawson: *O.K.*

Lawson: *Did you leave two road guides down the road?*

Dozier: *Yes*

Lawson: *That means you only picked up four since I only posted six.*

Dozier: *Right*

Later that morning, Lawson's concern over accountability of road guides resurfaced when he asked Maj Holm if any companies had reported missing Marines.

As the CAX concluded later that day, the majority of Kilo Company was transported to Camp Wilson by helicopter. Noting LCpl Rother's absence as Kilo prepared to board their helos, Rother's platoon commander, Second Lieutenant (2ndLt) Johnson, asked the platoon sergeant to account for Rother. The platoon sergeant responded that Rother was still on road guide detail. Johnson was unconcerned, as LCpl Key had not returned to his platoon either.

The helo lift commenced at 1300, 31 August and concluded by 1630; the portion of Kilo that did not helicopter back to Camp Wilson was instead assigned to a variety of training and work details. Kilo Company would not be intact until 1900 that evening.

That evening, the acting squad leader mentioned to the platoon sergeant that LCpl Rother had not been seen all day.

During the afternoon, accountability was maintained only by informal reports given by squad leaders to platoon sergeants. Although LCpl Rother's fire team leader, LCpl Paulate, stated he gave no personnel report to Sergeant (Sgt) Turnell, Rother's squad leader, other fire team members stated Paulate reported the *presence* of himself and Rother's two *other* fire team members to Turnell. Sgt Turnell departed the base a few hours later to visit family members. Gunnery Sergeant (GySgt) Jones, the platoon sergeant, had not received a special liberty request for Turnell; 2ndLt Johnson was unaware of Turnell's absence.

At 1800, 2ndLt Johnson queried his platoon sergeant, Sgt Clyde, for the status of the platoon's personnel, weapons and gear.

On the morning of 1 September, Sgt Clyde, submitted an "all present" platoon report. That evening, the acting squad leader mentioned to the platoon sergeant that LCpl Rother had not been seen all day. The company gunnery sergeant was informed of the problem and notified the rest of the chain-of-command. A search was underway within the hour.

Hundreds of Marines combed the desert for days on foot and in the air. The search found only Rother's pack and some rocks positioned like an arrow. The Marine Corps' initial report to Rother's parents was that their son could have taken unauthorized (UA) leave from duty.

At request of Rother's family, another search was conducted 4-6 November, this time involving civilian SAR experts. No further trace was found. On 4 December the remains of LCpl Jason J. Rother were discovered about seventeen miles from where he had been posted.

The following excerpt contains the views of a Naval Criminal Investigative Service (NCIS) agent's opinion on the circumstances surrounding the death of LCpl Rother. It is based on the available evidence, the behavior of other people in similar situations, and the experience of SAR personnel.

It will never be known exactly why he was missed when the vehicle went through which was supposed to pick him up. It is possible he was asleep, but this is only conjecture on my part.

He began his attempt to walk out fairly early in the day. He managed to cover nearly twenty ground miles. The direction arrow at the position last seen aimed to the east was left by LCpl Rother, and he in fact went in that direction. The lone set of footprints I tracked north up the sandy dry wash in early November to the vicinity of Bench Mark eighteen were in fact the hope that some element of his unit was still located in that area.

Upon discovering that there was nobody left at Bench Mark eighteen LCpl Rother decided to attempt to walk out to the highway which was clearly visible to the north of Bench Mark eighteen. The distance to the highway from the point where I lost the tracks was approximately five miles straight line distance.

He was attempting to conserve his water, as evidenced by the fact that there was a small amount remaining in one canteen. I would guess that at the spot where he stopped (less than one mile from the highway) he was considerably dehydrated and close to exhaustion and simply wanted to rest. He made a serious mistake by pitching his poncho liner lean-to with the large area of the poncho liner facing west. I estimate it was mid-afternoon at this time and the heat that poncho liner soaked up must have been incredible. He took off his web gear and laid it with his rifle at the south end of the lean-to, and crawled in to rest.

For whatever reason, he came awake one last time, but totally delirious. He came out of his lean-to and ripped it loose in the process, which accounts for it being found fifty yards away. It was probably blown to that location by the winds. He ripped off all of his clothing at this time (which accounts for the anomaly of finding all the discarded clothing in one area as opposed to being scattered along the terrain), but for some unknown reason took his military identification card and one empty canteen and started walking southeast, barefoot and dressed only in his t-shirt and underwear. The canteen was discarded almost immediately. After fifty yards, he ripped off his t-shirt, which does fit the pattern of discarded clothing. Shortly thereafter, he dropped the ID card.

Only fifteen yards further, LCpl Rother dropped to the ground for the last time. He died in that location. He was still wearing his shorts, as evidenced by their soiled condition. After his body decomposed, the coyotes found it and scattered it to the locations where the search recovered the various parts. In this period, the coyotes tore off his shorts.

I doubt seriously if he was alive thirty-six hours after being missed by the vehicle which was supposed to pick him up. It seems probable that he did not even make it twenty-four hours. Based on the evidence available to me, I find it inconceivable that LCpl Rother was attempting to go UA. The path he took indicates his best attempt to survive and nothing else. I am impressed that he made it as far as he did and it is a shame he came so close and did not survive.

In the aftermath of LCpl Rother's death, the following charges were filed:

- 1stLt Lawson was charged with dereliction of duty for failing to account for LCpl Rother's welfare by posting him alone as a road guide. He was also charged with disobeying an order for two violations: failing to post guides in pairs as

directed, and failing to provide a roster of the guides to the logistics officer before they were posted.

- Sgt Clyde was charged with dereliction of duty for failing to properly account for the welfare and whereabouts of LCpl Rother, falsely reporting that his platoon was accounted for, and granting unauthorized liberty to Rother's squad leader. He was also charged with disobeying the order of his company commander by granting special liberty without the battalion commander's approval.
- Sgt Turnell was charged with dereliction of duty for failure to properly account for LCpl Rother. He was also charged with unauthorized absence from his unit and with disobeying the command that he not leave the unit without prior approval of the battalion commander.
- The investigation included recommendations for adverse administrative action against Maj Holm and LtCol Robeson. At the direction of the Commandant of the Marine Corps, 1stLt Johson, Capt Henderson (the CO, Kilo Company) and LtCol Robeson were relieved of command and received undisclosed reprimands.

Questions for Discussion

1. As in most fatal mishaps, LCpl Rother died because his fellow Marines committed a chain of blatant errors and made poor assumptions. Taken individually, these mistakes would likely have been harmless; however, when combined they resulted in a series of events that killed a Marine.
 - From their immediate position, how could senior echelons have kept a young Marine safe?
2. Take a look at 1stLt Lawson's role in the case study.
 - Did 1stLt Lawson's actions indicate a lack of guidance? Where could he have gone for the correct guidance needed to take care of his Marines?
 - Did his actions indicate lack of dependability or loyalty to his Marines?
 - We most often think of loyalty as an expression of dedication to our seniors. Were LCpl Rother's seniors disloyal to him?
3. Failures of accountability are punished with great severity in some organizations.
 - Given foresight into LCpl Rother's death, would BLT 3/2 have accepted a heightened embrace of accountability before the incident?
 - Would they accept the same embrace of accountability without knowing LCpl Rother could die?
4. If one of LCpl Rother's seniors had discovered his absence in the first few hours after erroneously reporting him as "present," would reporting this error have constituted an act of courage?
5. The actions of 3/2's NCOs and officers on 31 August indicated the existence of
 - implicit conditions and assumptions that drove the following decisions:
Determining the time and method for accountability of personnel and material.

Delegation of authority to proxies during liberty periods and informing seniors of Marines' whereabouts.

- What command climate fostered these conditions and assumptions?
- What could 3/2's NCOs and officers have done to foster a command climate in which LCpl Rother's absence could have been discovered in time to save his life, or in which LCpl Rother would never have been unaccounted for?

6. In a story filled with Marines who fell short of our expectations, LCpl Adamson stands as a noted exception. One of the most junior Marines in the case study, Adamson thought critically and took timely steps to conduct the mission without loss of life or material.

- What actions did LCpl Adamson take?
- How do we encourage such behavior in our subordinates?

7. Read the second endorsement to the investigation, by Commandant of the Marine Corps, General A. M. Gray.

- What leadership traits and principles appear to be most important to General Gray?
- How does General Gray, through this endorsement and the actions he took against officers involved, stand on responsibility and accountability?

Second Endorsement on Col Angel's Investigation Report

The American people accept the inevitability of Marines suffering injury and death in training, because they know that their Marine Corps is engaged in a tough, demanding and dangerous profession. However, they will not—nor should they—accept our maiming and killing their sons and daughters in so-called training ‘accidents.’ Neither will I!

Realistic combat training and safety go hand-in-hand. We have tested that proposition for too many years and in too many wars to now lose sight of its validity. Wasting lives through carelessness, thoughtlessness, or conscious disregard of the principles which have guided our Corps throughout its history cannot be countenanced. In war, every Marine who is rendered unfit for combat because of such waste jeopardizes victory in battle. Thus in peacetime, we must include safety as an integral part of our training. To do less is to break faith with those who entrusted their Marine Corps to our stewardship.

Lance Corporal Rother's death was not an accident. ‘Accidents’ happen. His death didn't just happen; rather it was the culminating event of a series of acts, each consciously committed by human beings: intelligent, experienced and highly trained Marine Corps officers and noncommissioned officers. It was the certain and foreseeable result of an attitude which I intend to see erased from our Corps.

Any who think they can simply drop off one of their Marines, literally or figuratively, and then not have to worry about him had better make an appointment with me, because that violates all my rules. That's a state of mind which contradicts every principle of concerned leadership on which we have traditionally prided ourselves. Marines look out for each other; we are “Semper Fidelis” – to one another – as well as to our great nation; we are a “Band of Brothers.” These are not just slogans, they are real standards which we must insist upon and exercise daily in every thing we do. Those involved in this tragedy unfortunately overlooked them, and so it stands as one more example of the price paid by innocent victims for that kind of misfeasance.

Moreover, this case concerns me because it demonstrates that some are not taking investigations of training incidents seriously enough. When a Marine is killed or injured while training, more than the immediate environment of the occurrence must be

examined: The quality of the leadership at every echelon of the organization, its overall level of training, the degree of supervision of those directly involved, and organizational SOPs are among the matters which must be closely and carefully investigated. It should therefore be obvious that the investigating officer cannot be a member of the organization being investigated nor should he be appointed by its commander. That simple truth apparently escaped those charged with responsibility for ordering the first investigation of this incident.

No amount of investigation or after-the-fact remedies will ever bring back Lance Corporal Rother to his family, friends, or to us. The oversights and errors of judgment which resulted in his death are indelible. Yet, perhaps, something valuable can be salvaged from this tragedy; perhaps a lesson can be learned which will prevent similar recurrences. I wholeheartedly endorse recommendation five and the action thereon of the Commanding General, Fleet Marine Force, Atlantic, but I intend to take it a step further. Accordingly, I hereby direct that a copy of this investigation (less enclosures) be provided all Marine Corps commanding generals for appropriate incorporation of its findings and conclusions in all their operations and training. I specifically direct the Commanding General, Marine Corps Air Ground Combat Center, to take action on recommendations three and four.

Finally, for a number of years now, our training has been designed and conducted to prepare for maneuver-style warfare. A basic principle of this training has been the need to ensure all Marines, two echelons up and two echelons down, be thoroughly indoctrinated in the mission, scheme of maneuver, safety restrictions, and overall conduct of the exercise. Your Commandant has repeatedly emphasized the requirement for continuous communications up and down the chain of command. If such an omission occurs again, be assured, commanders at each echelon of command will be relieved and subject to disciplinary action.

Subject to the foregoing, the proceedings, findings of fact, opinions and recommendations, as endorsed, are approved.

-General A. M. Gray, Commandant of the Marine Corps, 4 January 1989

Case Study 6: Too Many Chiefs and Too Few Indians? The O'Grady Rescue

Case Summary: A small group of Marines sent on a rescue mission is accompanied by three of their Marine Expeditionary Unit's most senior Marines.

Discussion Topics: Judgment, Unselfishness, Decisiveness

Target Audience: Staff NCOs, Field Grade Officers

Purpose: This case study centers on the commander who weighs the merits of going forward with a small group of Marines who normally train and execute in a decentralized environment.

Discussion Leader Notes:

Table of Contents

Introduction	105
“BASHER 52” Down	107
24th MEU To the Rescue	108
Questions for Discussion.....	112
End Notes	114

Introduction

8 June, 1995. Since the Bosnian Serb SA-6 missile shot down his F-16 on 2 June, Captain (Capt) Scott F. O'Grady, USAF was still in "Indian Country," evading capture in Bosnia. The 24th Marine Expeditionary Unit (Special Operations Capable) (24th MEU (SOC)), commanded by Colonel (Col) Martin "Marty" Berndt, had been assigned the mission to rescue him. The MEU had a ready-made Tactical Recovery of Aircraft and Personnel (TRAP) "package" of equipment and Marines standing by. This "package" included an element of two CH-53E heavy lift Super Stallion helicopters, an element of two UH-1W Sea Cobras, an element of two AV-8B Harriers, a platoon of Marine Infantry, medical corpsmen, and the Battalion Landing Team (BLT) Commanding Officer (CO), Lieutenant Colonel (LtCol) Chris J. Gunther—acting as TRAP force commander—all awaiting the "go" signal. Additional aircraft in-theater were assigned to provide Suppression of Enemy Air Defenses (SEAD) for the mission.

Admiral (ADM) Leighton W. "Snuffy" Smith, Jr., the Commander-In-Chief, U.S. Naval Forces Europe and also the NATO Commander of Allied Forces Southern Europe, was working the problem as he was in charge of the Bosnia missions. He had done all the coordination possible to help the Marines, all that remained was to decide when to launch the TRAP force from the USS *Kearsarge* (LHD-3).

Col Berndt told the admiral, "We're going to launch at 5:00." Admiral Smith asked, "Are you going to go?" "I had planned to go," replied Berndt, "and unless you tell me otherwise, I'm going to go."

The admiral pondered this for a moment. He already had one senior Marine officer aboard the helicopter—the BLT commander. Now his MEU commander would be on board as well.

Operation DENY FLIGHT

ADM Smith was having problems with the Udbina airfield. Located in Croatia, it was controlled by the Serbs who had fired surface-to-air missiles (SAMs) against NATO aircraft in 1994. The admiral had requested permission from the United Nations Protective Forces (UNPROFOR) Commander to strike the airfield. While the strikes had damaged Serb missile launchers, they had not hit any radars supporting the SAMs.

As a result the Serbs were able to continue to fire against NATO aircraft. ADM Smith was forced to appeal, once again, to UNPROFOR. However, this time, his request to strike back was denied.

The UNPROFOR Commander, General Bertrand DeLaprelle, stated that his peacekeeping operation was at risk when the peacekeepers engaged in war. Still concerned for the safety of his pilots, ADM Smith was able to work out procedures through NATO and UN commands to assure the necessary flexibility to protect his aviators, without taking action against the airfield. According to ADM Smith:

On two occasions in November 1994 we had been asked not to fly over Bosnia because the UN was afraid the Bosnian Serbs would radiate us and I would authorize our airplanes to shoot. Some sensitive negotiations were going on at the time. . . . So I wanted to make sure that, again, the UN knew and the Bosnian Serbs knew that I was becoming concerned. What I did not do—and what I probably should have done, in retrospect—was to have reinstituted right away all of the procedures that we had in effect right after the November incidents. That is to say, nobody flies up there without Suppression of Enemy Air Defenses (SEAD) cover. Unfortunately, I didn't do that. That was a mistake on my part.

Smith's air commander, Lieutenant General (LtGen) Michael E. "Mike" Ryan, NATO Air South Commander and U.S. 16th Air Force Commander, complained that the restrictions were just like those he faced when flying in Vietnam:

In Bosnia, we were not allowed, or there was no political authority or will, to go after the air defense systems, yet we wanted to make statements by our bombing. You can't hit the airfields, yet they can take off and shoot at you. You can't bomb the SAM sites unless they shoot at you. You can't pre-emptively take them out. Those kinds of restrictions are wacko. That is a stupid way to run a war. People say, "This isn't a war, it's a peacekeeping operation." It's a war in the air here, I guarantee you.

The Commanding Officer of Aviano Airbase in Italy agreed:

We were losing air superiority for the first time in my memory. Superiority means, basically, that you can fly wherever you want But because SAM systems are set up in certain places, we can't just fly over there with impunity. We can't go out and fly at will over areas to deny them flying their fixed-wing aircraft, because we're going to get shot down. A large portion of airspace over Bosnia is denied to us.

The Serbs say, "If you take our SAMs out, we're going to take hostages." They've got that hammer over your head, so that's the reluctance. No one's afraid that we're going to ruin somebody's infrastructure. They are worried that the people on the ground will be put [in] an unnecessary risk. Admiral Smith and General Ryan have voiced their opinions as clearly as possible. But short of retiring, what can you do? We don't make NATO policy; they do. We don't make political policy, and we live with whatever we're told to do.

"BASHER 52" Down

Capt Scott O'Grady began his forty-seventh DENY FLIGHT mission as the F-16C wingman for Capt Bob Wright. The pair were operating under the nicknames "Basher 51" (Wright) and "Basher 52" (O'Grady) without backup of a defense suppression flight. "Snuffy" Smith was anxious, as usual, about the Serbian SAM threat:

We were watching radars and we were watching SAM launchers. We weren't always good at knowing where they were, because these things move around and they're easily camouflaged. We kept a day-to-day track on where they were, but I was never comfortable that we always knew where they were.

Earlier on, I had several discussions on this subject with General George Joulwan. He's the commander of all NATO troops in Europe, and my boss. I had commented on the possibility of SAM traps. I thought, however, that they would be set up more toward Banja Luka. If we were going to be suckered into something, the Bosnian Serb Army (BSA) would fly an airplane up there and cause us to go up, and they'd get us up there. So we were very, very cautious about allowing our aircraft to expose themselves to these potential SAM traps.

Well, obviously what happened is that we became predictable. Our aircraft were flying out of the SAM envelope, but they were flying in the same place and looking at the same Udbina airfield. So the BSA moved a SAM site down there. Whether it was their intention to set up a SAM trap, whether they had a preconceived plan to shoot down a NATO airplane, I don't have a clue except they obviously ended up with a SAM down there. And on the second of June, Bob Wright and Scott O'Grady were headed toward it.

After the fact, we learned that there was a very, very short sniff of an SA-6 radar that was later correlated to the site that ended up shooting O'Grady. But when the aircraft picked it up, the aircraft was in a turn, and certain parameters were not met which would allow us to fix this thing. It's all machine decided. Because of ambiguities, the system did not report that hit. And if it had reported it, in all probability it would have been taken as a spurious hit that showed up, and where it was, nobody would ever be able to say.

There were SAM warnings, there were indications of the presence of that radar ten to twelve minutes before. And in fact, Basher 51, Captain Bob Wright, had indications in his cockpit of Surface-to-Air Missile (SAM) radar, but Basher 52 did not. So 51 called and asked for correlation.

Basher 52 then got cockpit indications that a target tracking radar was acquiring him. Basher 51 called "Missile in the air," then "Missile impact." O'Grady's F-16 was seen, cockpit intact, plunging into the cloud layer.

24th MEU To the Rescue

Col Martin Berndt got the call about O'Grady and began the TRAP determination brief process on 2 June. According to Col Berndt:

We thought if it could be determined that he was alive and if his location could be framed, we could go in and get him right away. When we came into the Adriatic, we had two missions. One was the Tactical Recovery of Aircraft and Personnel, the other was to be prepared to respond to other contingency taskings that may come from Sixth Fleet. With those two there on the table, when this happened, we thought, "Well, here we go." But there clearly wasn't enough information.

The MEU went through their planning sequence, but lacked the exact location of Basher 52. Everything else was ready on 2 June and, according to the MEU commander, stayed ready for days:

We didn't want someone to call and say, "Okay, we think this is worth doing," and have us say, "Okay, we'll be ready in four or five hours." We were bringing up all the ammunition, staging it all on the starboard side of the flight deck. Again, pre-staging all the Marines' equipment, briefing the Marines, having everything set up nice and neat in organized rows with everyone knowing exactly what their role is . . . we stayed like that for six days.

An Aviano-based US F-16 received Basher 52's radio transmissions on the night of 7 June. O'Grady passed manually encrypted coordinates of his location to the plane. The wheels began to turn at Aviano, and the recall system soon got word to Snuffy Smith. It was now in the very early morning hours of 8 June.

ADM Smith called Marty Berndt at 0300 to ask whether the TRAP could go in while it was still dark or wait until daylight. LtGen Ryan thought that there was no way to get into Bosnia before daylight, no matter what force was used. Snuffy relates:

"I said, 'Marty, are you going to go in with this group?' Marty replied, 'Unless you order me otherwise, boss, I intend to go.'"

The BLT commander—a lieutenant colonel--was the TRAP force commander.

In the August 1995 issue of *The Marine Corps Gazette*, Major (Maj) Timothy Jackson notes in his article "An Analysis of the Rescue in Bosnia:"

Immediately following the raid, a hot topic of discussion among field grade officers at HQMC was the MEU commander's decision to accompany the mission commander in the TRAP force. Many felt that the MEU commander had no business going forward, that he was taking an unreasonable risk and, instead, belonged either back in the Landing Force Operations Center (LFOC) or airborne (offshore or "feet wet") in a command-configured Huey where he could better monitor and control the operation and maintain communications with higher headquarters in Naples, Italy.

During a discussion of where the mission commander should position himself during an in-extremis hostage recovery, Colonel [Gregory S.] Newbold made the point that the National Command Authorities would not want a mere captain or major “calling the shots” on scene in an operation where the prestige of the United States was on the line; they would want more “horsepower” on the deck. This is in no way an indictment of a Marine captain’s or major’s decision-making ability as the raid force commander; it is simply a reality that is too often ignored or not well understood during pre-deployment training.

Other writers in the same issue disagreed. According to LtCol Roger D. Kirkpatrick:

I doubt that Colonel Berndt’s SOPs or the TRAP training his MEU(SOC) underwent included the Colonel as mission commander, observer, or passenger. His proper place was with the ARG/MEU(SOC) battle staff. What would have been the consequences had Colonel Berndt’s helicopter been shot down? At his post as the MEU(SOC) commander, he would have the resources and capability to command and control the forces that were standing by should the TRAP mission encounter difficulty. That was his duty. As a member of the TRAP mission, he inappropriately “delegated” that duty to another and became a potential “rescuee” as opposed to the rescuer.

In a November letter to the editor, former Marine Captain Don Chappell commented:

Maj Jackson’s point that the National Command Authorities (NCA) would not want leave a captain calling the shots misses the mark The NCA’s overriding desire is the success of the operation once ordered. The U.S. has a recent history of successful military operations based on the examples set by Presidents Reagan, Bush, and now Clinton of allowing military commanders to command. The greatest threat to this laudable turn away from Vietnam-style micromanagement would be for our commanders, from the JCS level down, to demonstrate a lack of confidence in their subordinates by expecting “more horsepower on deck.” Acceptance of just a little erosion of command

authority (or its complement—responsibility) is the first step on the slippery slope back to the bad old days.¹

Of note, *Gazette* Editor Col John Greenwood observed in the November issue “Three out of every four comments received . . . on this issue have taken the position that the commander should not have accompanied the TRAP force.”

ADM Smith had this to say about Col Berndt’s decision to accompany the TRAP force:

It never occurred to me that he wouldn’t go in, because I know Marty Berndt. Some people might criticize Marty for being too senior for this mission. I thought whoever thinks that doesn’t have a clue; that person can’t even spell leadership let alone know what it’s all about.

The Commanding General, Marine Forces Atlantic, LtGen. Charles Wilhelm, made this observation:

MEU commanders have a philosophy of lead from the front. The toughest decision you make on a mission like that is to abort, to not carry through on the mission. I know that Colonel Berndt did the same thing I would do. On a one-of-a-kind mission like that, where the decision was Go or No Go, I went myself. That way I did not have to rely on hearsay or secondhand information or an assessment of a situation made by a Marine less experienced than myself. If the decision was wrong, it was mine, and all mine, to live with. I felt that was what I was paid to do.

I think that’s how Marty Berndt felt. In his shoes I would have done the same thing. I support his decision. Again, the critical decision is when you make the decision to pull the plug on a mission and abort it. The key decision is to turn it off. I think most MEU commanders will tell you, “I would prefer to make that decision.”

Questions for Discussion

1. ADM Smith was just informed that both his senior Marine officers, Col Berndt and LtCol Gunther, would be on the TRAP mission going after Capt O'Grady. Taking into account the commentary included with this case:
 - Why would *both* MEU commanders want to go on the mission? Whose positions did the commanders take on it?
 - Should ADM Smith let neither, one, or both of his Marine commanders accompany the TRAP mission? Why?
 - What are the possible consequences of your decision both for the TRAP mission and the MEU commanders?
2. Both MEU commanders exhibited traits we consider to be virtues. However, even virtues may become vices under the wrong circumstances.
 - What tensions exist between loyalty and duty?
 - By emphasizing one do we forsake the other? Why or why not.
 - Describe the decision of both Marine commanders in these terms; then how, by choosing differently, they may have influenced the TRAP mission.
3. In order to establish air superiority, both enemy aircraft and anti-air defenses must be neutralized. Commander of Aviano Airbase in Italy put it, "We're losing air superiority..."
 - According to the law of war, how may the Serbian radar sites be classified? What aggressive actions, if any, would the UNPROFOR Commander be ethical in authorizing?
 - Given the peacekeeping objective of UNPROFOR, why did General DeLaprelle not authorize use of force against Serbian radar installations? Why do you agree or disagree with the general's decision? How would you have acted differently if you were in the general's position?
 - What does ADM Smith ethically owe Capt O'Grady when authorizing the mission? How does the admiral ensure the potential risks to Capt O'Grady are mitigated? How would you have acted differently if you were in the Admiral's position?

- To what extent are ADM Smith and/or General DeLaprelle ethically responsible for Capt O'Grady being shot down?

4. Capt O'Grady was shot down 2 June. Later that day, the MEU commander stated he was ready to launch but did not have a location. On the night of 7 June, Capt O'Grady's location was picked up by a NATO F-16 based out of Italy. Around 0300 on 8 June, ADM Smith discussed with Col Berndt and LtGen Ryan the possibility of immediate launch without light or delay until daylight. The TRAP mission was delayed until daylight later on 8 June on orders of LtGen Ryan.

- If you were in charge, at what point would consider the TRAP mission adequately prepared to go after Capt O'Grady?
- When would you have launched the TRAP mission?
- Assume Capt O'Grady been found dead or been captured after his location was confirmed. What ethical responsibility would LtGen Ryan, ADM Smith, and/or Col Berndt share in his death or capture?

5. LtGen Ryan drew several similarities between the ROE in Vietnam and in Bosnia. Particularly, he noted that policy makers wanted to make political statements by bombings. However, LtGen Ryan felt the ROE hampered his ability to effectively use force to complete his mission.

- Given the situation in Bosnia and the world at the time, would it have been practical to destroy all Serbian air-defenses? Would it have been ethical? What are the consequences, to the peacekeeping objective and in the international arena, of your decision?
- If you were in charge of policy, what ROE would you have set for LtGen Ryan? What are the advantages of your ROE over the ROE described by LtGen Ryan? How may the American public, our Allies, and our enemies react to your ROE?

End Notes

¹ The relationship between chiefs of state and their generals, most commonly known as civil-military relations, is the subject of vigorous debate. One school of thought insists, as Maj Chappelle did, that civilians should set broad aims for their generals, leaving uniformed officers to campaign as they best know how. The other school of thought insists that senior civilians and their generals must engage in a constant dialogue resulting from the civilian's active participation in military affairs. For further reading, see Samuel Huntington's *The Soldier and The State* and Eliot A. Cohen's *Supreme Command*.

Case Study 7: Heartbreak to Disgust: A Ranger Dies in Afghanistan

Case Summary: Professional football player turned Army Ranger Pat Tillman dies in a friendly-fire incident in Afghanistan. The decisions made by Army leadership were the focus of a controversy that shook national resolve in the Global War on Terror.

Discussion Topics: Judgment, Tact, Integrity

Developed By: Col Eric Walters, USMC

Target Audience: Staff NCOs, Field Grade Officers

Purpose: The lessons of this study are important as a clear example that failure to follow prescribed procedures for serious incidents and failure to tell the truth about an incident, even if motivated by seemingly good intentions, can create very serious and long-lasting adverse impacts that may become strategic in nature.

Discussion Leader Notes:

Table of Contents

Introduction	118
A Little about CPL Pat Tillman	119
An Army of Two.....	120
Events Leading up to the Ambush	122
The Ambush.....	127
The Immediate Aftermath.....	132
Required Actions	133
Post-Event Notifications	135
Initial Investigations.....	138
Mistrust and Additional Investigations	139
Recommendations and Results	142
Questions for Discussion.....	144
Appendix A: Silver Star Citation	147
Appendix B: Scope of the Negative Impact.....	148
Appendix C: Event & Investigation Timeline.....	149
End Notes	154

List of Figures

Figure 1. With the Arizona Cardinals.....	119
Figure 2. With His Brother Kevin in Saudi Arabia in 2003	120
Figure 3. 4th from Left, with Rangers in Afghanistan, April 2004	121
Figure 4. Afghanistan	122
Figure 5. The Area of Operations.....	123
Figure 6. Planned Routes for Serials 1 and 2.....	Error! Bookmark not defined.
Figure 7. Actual Routes.....	Error! Bookmark not defined.
Figure 8. Ambush Initiation.....	Error! Bookmark not defined.
Figure 9. Maneuver	128
Figure 10: Serial 1 Enters the Fight.....	129
Figure 11. Friendly Fire Toward the Ridgeline	130
Figure 12. Continued Friendly Fire	131
Figure 13. Key Event Timeline	135
Figure 14. Senator McCain at Memorial Service	138
Figure 15. CPL Pat Tillman, Army Ranger	144
Figure 16. Camp Tillman, Afghanistan	147
Figure 17. CPL Pat Tillman USO Center Groundbreaking	154

Introduction

Fratricide, the accidental killing of one's own personnel in war¹, can occur despite numerous measures designed to prevent it. Within the unit, the effects of such an event can range across a wide spectrum and may include internal unit suspicion, mistrust, anger, grief, and perceptions of guilt, all of which can degrade a unit's cohesion and combat effectiveness. Surviving family members, already devastated by their loss, suffer even more after learning a loved one was killed by friendly forces. When highlighted by spectacular or unusual settings or personalities, fratricide generates intense media attention, greatly increasing the impacts of the effects.

Because of such serious impacts, the armed services developed very specific procedures to help ensure proper handling of friendly-fire casualties and proper notification of surviving family members. In cases of fratricide, appropriate investigations are conducted to determine how to prevent such incidents in the future. These procedures are based on lessons written in blood.

This case study examines an already publicized incident of fratricide whose tragic nature was worsened by conscious decisions of leaders at several levels. Post-event actions – denounced at the very highest levels in the Department of Defense (DoD) as a series of critical errors – created serious doubts about the credibility and integrity of the Army and DoD. This study briefly reviews the sequence of events and contributing factors that led to the death of U.S. Army Corporal (CPL) Pat Tillman, and the follow-on actions at multiple levels in the operational and administrative chains of command that caused his family to lose confidence in Army leadership. These post-event actions ultimately led to the censure of one very senior officer, and various punishments or administrative actions for twelve other soldiers.

The focus of this study is on the interplay of fame, fratricide, policy requirements, and honesty. It does not address the tactics or operational shortfalls of the incident but rather the strategic impact of publicizing an unverified story when the truth could have been determined through patience and proper investigation. The truth of this incident reminds all leaders that after the firing has stopped, there is often value added by

catching one's breath and slowing down a bit to ensure the correct follow-up actions are taking place.

The story behind CPL Pat Tillman's death and subsequent actions offers serious lessons for Marines from squad to division level and even higher. It is a story that includes a mix of confusion on the battlefield during the fight and perhaps even more confusion after the fight had ended – confusion that still permeates discussions about the event to this day. Nevertheless, its lessons are important as a clear example that failure to follow prescribed procedures for serious incidents and failure to tell the truth about an incident, even if motivated by seemingly good intentions, can create very serious and long-lasting adverse impacts that may become strategic in nature.

A Little about CPL Pat Tillman

Prior to entering the Army, CPL Tillman was known widely for his skill on the football field. Beginning in 1994, he played college football as a linebacker for Arizona State University, where quarterback Jake Plummer would become his friend. Plummer would later be his teammate on the National Football League (NFL) Arizona Cardinals. Though “small” – 5'11” – Tillman excelled as a linebacker at Arizona State; in his senior year was selected as the Pac-10 Defensive Player of the Year. He was also a formidable academic competitor, graduating with a marketing degree in three-and-a-half years with a grade point average of 3.84.²



Figure 1. With the Arizona Cardinals

The Arizona Cardinals selected Pat as the 226th pick in the 1998 NFL Draft. They moved him into the safety position, where he started ten of sixteen games in his rookie season.³ During his brief career with the Cardinals, he made 331 tackles (242 solo), two and a half sacks, and three interceptions for thirty-seven yards, forced three fumbles, deflected sixteen passes, and recovered two fumbles in sixty games.⁴

Eight months after the 9/11 attacks, Pat Tillman saw less reward in at \$512,000 annual salary⁵ than in the chance to serve his country. In May 2002, he turned down the Cardinals' offer of \$3.6M over three years.⁶ Instead, he committed to a three-year enlistment in the U.S. Army with his brother Kevin.⁷ For obvious reasons, CPL Tillman was not a typical Army recruit. His decision to enlist while turning down a lucrative contract offer received national attention, especially in the sports media.



Figure 2. With His Brother Kevin in Saudi Arabia in 2003

An Army of Two

Over the next few months, CPL Tillman and his brother Kevin completed Infantry Basic Training and the Basic Airborne Course at Fort Benning, Georgia. In early 2003, they reported in to the 75th Ranger Regiment and began the Ranger Indoctrination Program. By this time, CPL Tillman held the rank of Specialist (SPC). [Note: SPC Tillman was posthumously promoted to Corporal and is referred to as CPL in this study.] He returned to Fort Benning for Ranger School and then reported to Fort Lewis,

Washington, where he and his brother were both assigned to 2d Platoon (the “Black Sheep”), A Company, 2d Battalion, 75th Ranger Regiment.⁸

The 75th Ranger Regiment is the only regiment of its kind in the U.S. Army. Considered by many to be the world’s best light infantry, the unit spends virtually all of its time either deployed on real-world missions or on realistic, live-fire training exercises. The Rangers typically fall under two high-level chains of command – a permanent administrative chain through the U.S. Army Special Operations Command (USASOC) headquartered at Fort Bragg, North Carolina, and an operational chain that varies depending on the deployment location and the missions for which they are deployed. Since 9/11, the operational chain has generally gone through various Joint Task Forces (JTFs) subordinate to U.S. Central Command.



Figure 3. 4th from Left, with Rangers in Afghanistan, April 2004

In March 2003, the Tillmans’ company deployed to Iraq for a short period. In early April 2004 the unit deployed again, this time to Afghanistan. During the month of April, the company conducted a series of sweep and search missions against remnants of the Taliban and al Qaeda in far eastern Afghanistan along the border with Pakistan. They were working under the command and control of an inter-agency special mission team – located at Forward Operating Base (FOB) Salerno in Khowst, Afghanistan (See

Figures 4 and 5).⁹ Their operating area included the small towns of Magarah and Manah.



Figure 4. Afghanistan

Events Leading up to the Ambush

On 20 April 2004, while the “Black Sheep” of 2d Platoon were involved in sweep and search operations, an unfortunate chain of events and circumstances began to occur in a manner that would lead to the friendly fire death of CPL Tillman and one Afghani soldier, as well as the wounding of two other Rangers. The combination of events had much more impact than if they had occurred separately. First Lieutenant (1LT) David Uthlaut, the Black Sheep Platoon Leader, had been given a new mission to sweep the area in and around Manah. This pending mission, timed to take place within the next thirty-six hours, came at a time when the platoon attempted to resolve a

disabled vehicle problem.¹⁰ A mechanic with the platoon attempted to repair it with no success. He suspected the vehicle, a HMMWV, had a bad fuel pump. On 21 April, a helicopter flew in with a HMMWV fuel pump, but by early morning of 22 April the mechanic had not been able to repair the vehicle. Because of this, 2d Platoon had to cease operations and 1LT Uthlaut decided to tow the HMMWV straight to Manah using organic platoon vehicles.¹¹

The Afghanistan Military Forces (AMF) soldiers attached to the platoon suggested using a less rugged, indirect route since they were towing the HMMWV. 1LT Uthlaut agreed to let the AMF soldiers lead the way.¹² The platoon loaded up in their remaining vehicles and began moving along this suggested route with the disabled HMMWV in tow. Between 1000 and noon, the towed HMMWV suffered disabling damage to its front end in the rugged terrain. Lacking the ability to lift the HMMWV's front end for towing, the platoon was forced to halt near Magarah.¹³



Figure 5. The Area of Operations

1LT Uthlaut, under pressure to get to his next mission area near Manah, knew he had to get the broken HMMWV to a nearby paved road so that a wrecker could be dispatched to pick it up. After discussions with his NCOs, his higher headquarters located at FOB Salerno, and local citizens, 1LT Uthlaut decided to hire a local Afghani truck driver to transport the vehicle to the paved road.¹⁴ During additional communications with his higher headquarters, 1LT Uthlaut was told to split his platoon into two elements (serials) – one to escort the broken HMMWV to the paved road and the other to place “boots on the ground” near Manah before dark. The lieutenant argued his case for not splitting the platoon – reduced firepower and security, poor communications in the area without additional SATCOM radios, and proximity to sunset – but he was told to make it happen.¹⁵

Accordingly, between 1730 and 1800 hours 1LT Uthlaut split the platoon into Serial 1 and Serial 2. He planned to travel with Serial 1, composed of six platoon-organic vehicles, and proceed as quickly as possible toward Manah. Serial 2, composed of five organic vehicles (including the disabled HMMWV) and the locally-hired truck, was to proceed by a different route toward the Khowst highway, drop off the damaged HMMWV, and then return to link up with Serial 1 as soon as practical (see Figure 6). The platoon sergeant and the company first sergeant were in Serial 2.¹⁶ CPL Pat Tillman was placed in Serial 1 and his brother Kevin was placed in Serial 2. By about 1800 hours the sun was beginning to set, casting long shadows over the rugged mountainous terrain and canyons.¹⁷

Serial 1 departed Magarah and began its planned movement generally northward out of Magarah and then westward into a canyon with steep walls. Serial 2 departed Magarah about fifteen to twenty minutes later.

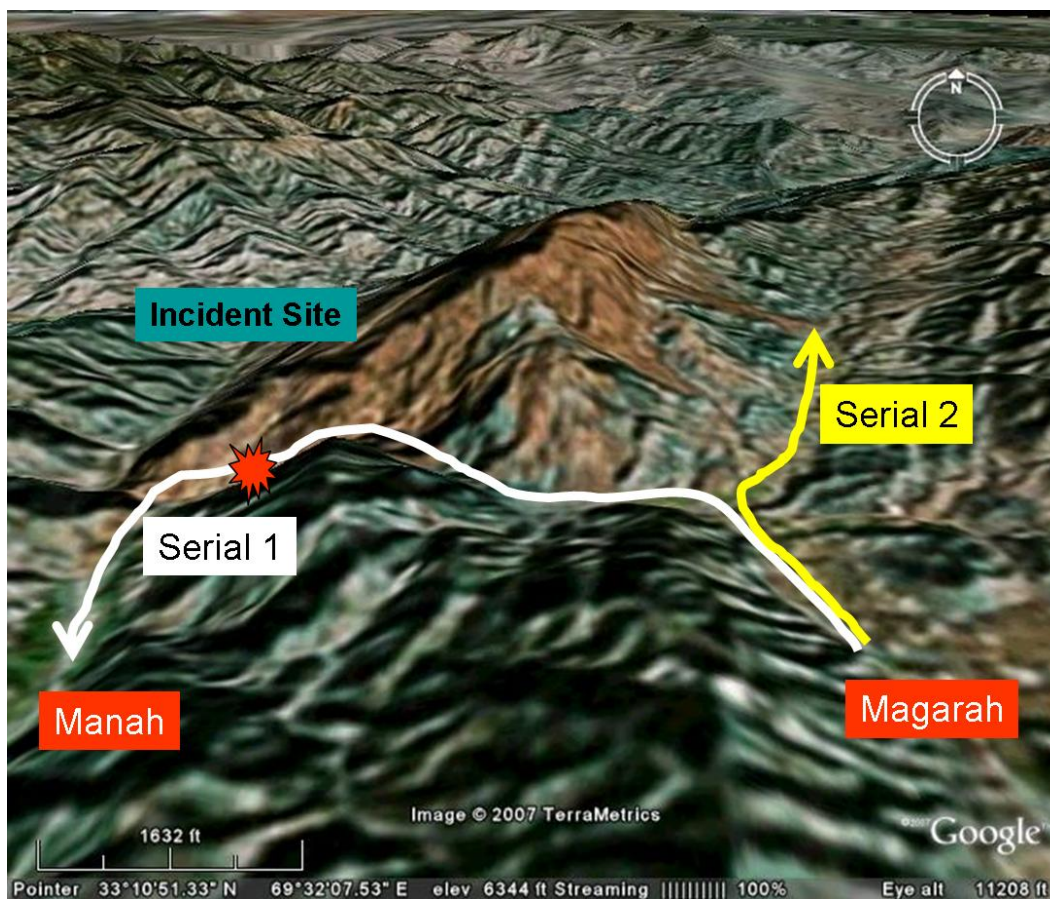


Figure 6. Planned Routes for Serials 1 and 2

After Serial 2 made its turn northward, away from the route Serial 1 had taken, the hired Afghani truck driver complained that the road was too steep and he knew a better route (see Figure 7). The NCOs in Serial 2 agreed to let the local driver lead the way.¹⁸

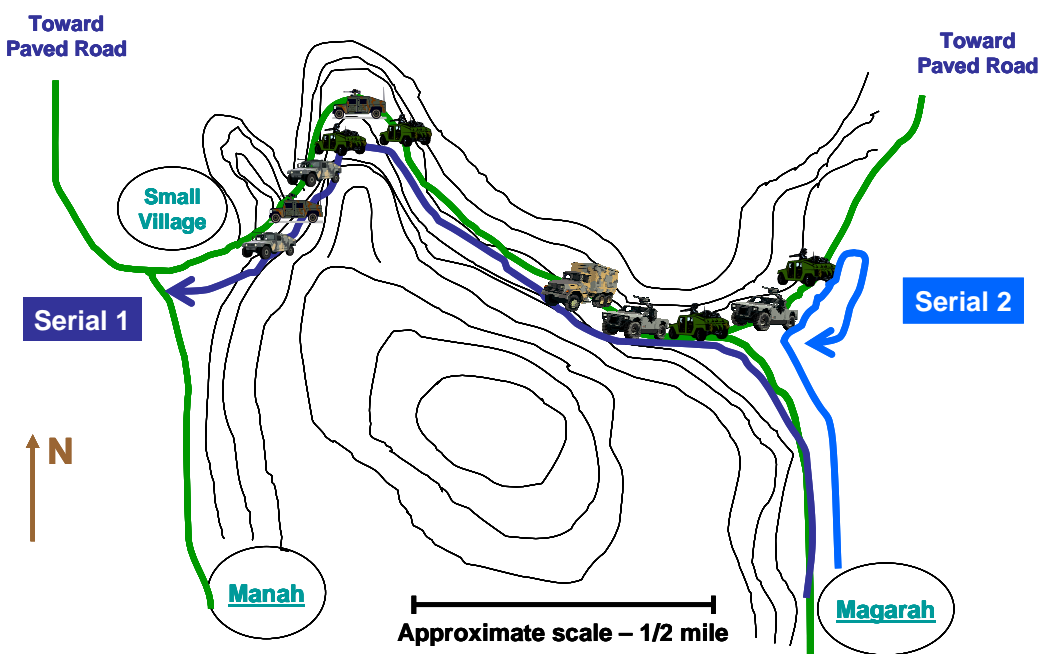


Figure 7. Actual Routes

As the next figures illustrate, the Rangers in Serial 2 – caught in the kill zone, but not under heavy fire – attempted to move as quickly as possible out of the very narrow canyon while returning fire up the steep canyon walls. However, the Afghani truck driver panicked and halted at the lead of the serial, in the narrowest part of the canyon, so the Rangers had to get him to move. Meanwhile, the Rangers in Serial 1 began to move on foot in an attempt to locate and engage the enemy forces (See Figure 9).¹⁹

The Serial 2 NCOs attempted to contact 1LT Uthlaut to let him know of the change in their plan. The ruggedness of the terrain, however, prevented clear communications with their line-of-sight Multi-Band Intra-Team Radios (MBITRs). While 1LT Uthlaut did hear they were changing their route, the specifics were not clear – due to the “spotty communications.”²⁰

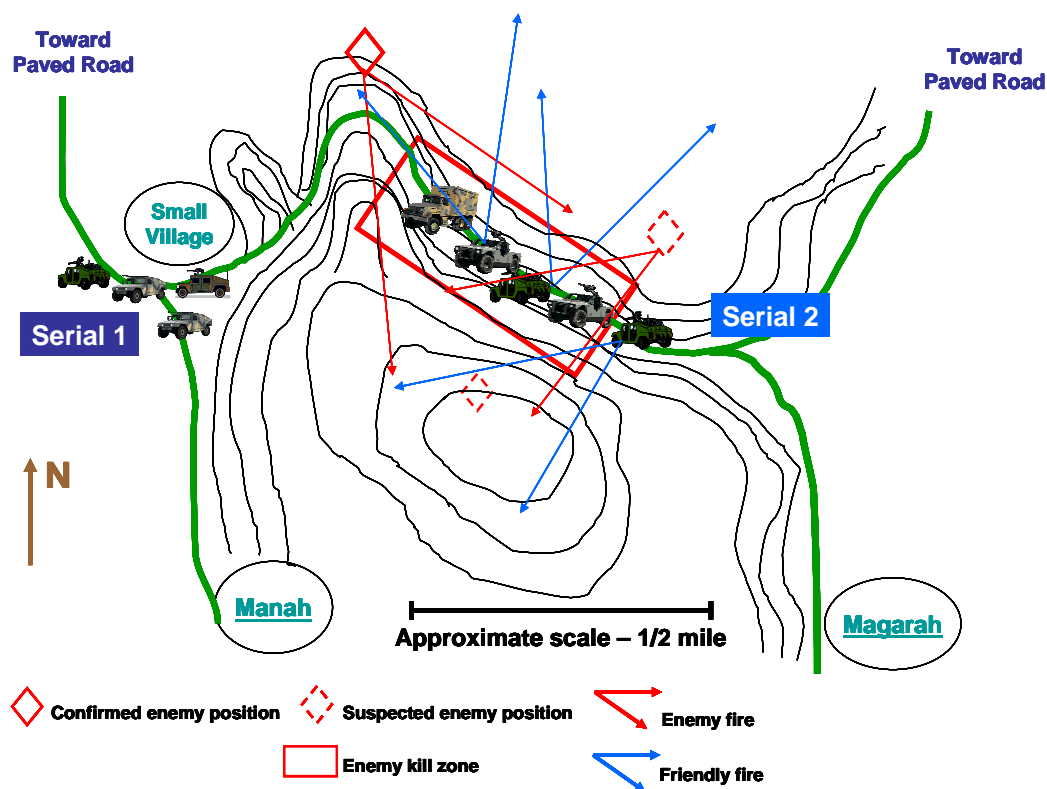


Figure 8. Ambush Initiation

The Ambush

Serial 1 passed through the canyon with no enemy contact. As it exited the canyon and prepared to turn southward toward Manah, members of the serial heard an explosion and gunfire to their rear. Serial 1 halted near a small village and dismounted their vehicles (see Figure 8).

Serial 1 attempted to establish contact with Serial 2 but, as 1LT Uthlaut said in one of his sworn statements, "There was a bunch of chaotic radio traffic." Likewise, as they attempted to break contact with the enemy forces, the NCOs in Serial 2 tried to contact Serial 1.²¹

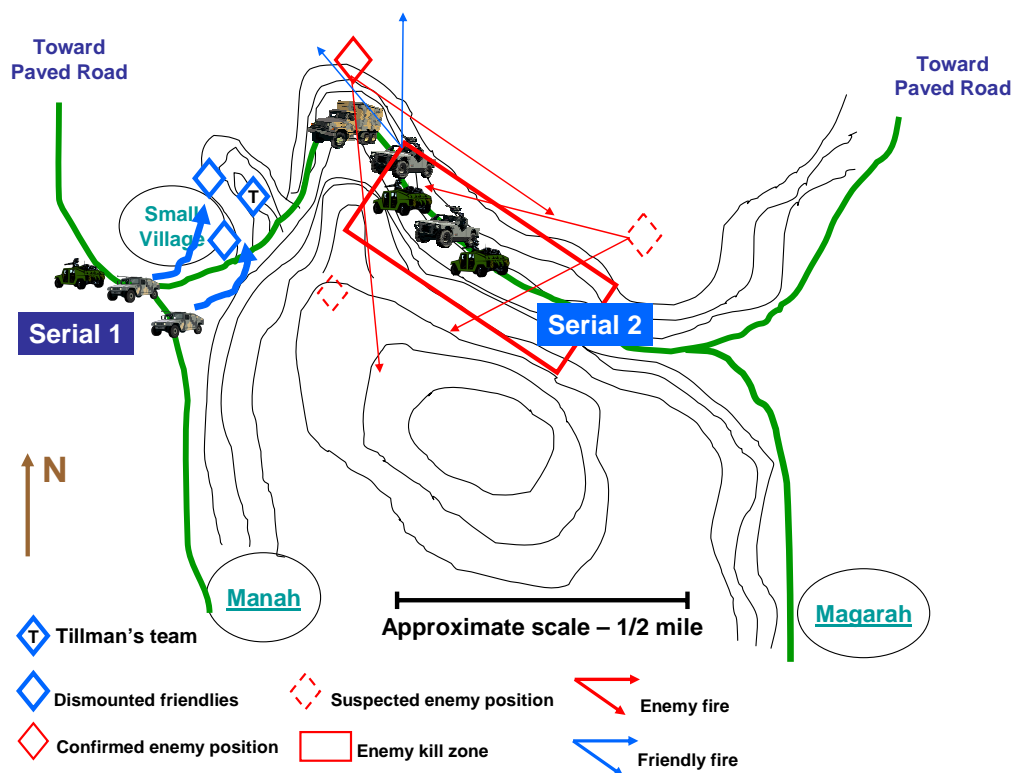


Figure 9. Maneuver

The Serial 1 members maneuvered around or through the village, moving up onto a small ridgeline that ran northward. CPL Tillman took PFC Bryan O'Neal and one AMF soldier up on the ridge with him. They ran further forward after CPL Tillman told one of the NCOs that he was going to try to engage the suspected enemy positions to the northeast. That placed them on the military crest of the ridge.²² The Rangers in Serial 1 began to fire toward muzzle flashes they could see high above the canyon floor (see Figure 10). They could also see the tracers from Serial 2's fire.

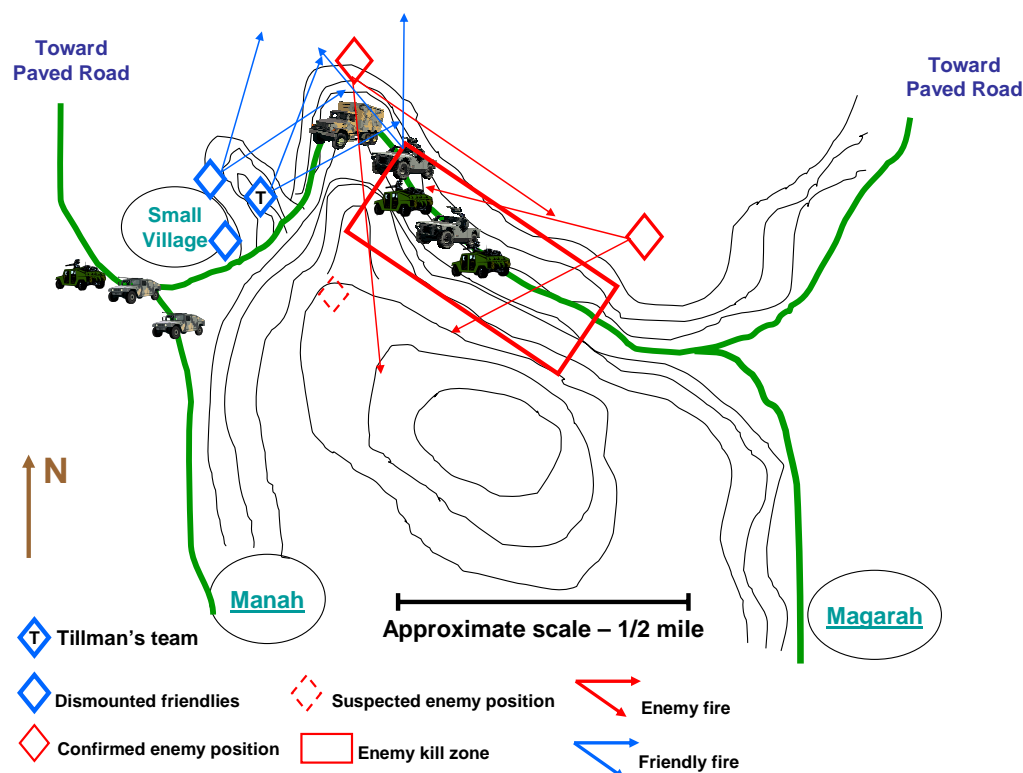


Figure 10: Serial 1 Enters the Fight

By now, the Rangers in the lead HMMWV in Serial 2, armed with an M-2 .50 caliber machinegun (MG), an M-240 7.62mm MG, and a Squad Automatic Weapon (SAW) 5.56mm MG, maneuvered their vehicle around the Afghani truck; inside, Sergeant (SGT) Greg Baker noticed muzzle flashes on the ridge to their west. Those muzzle flashes appeared to be directed at Serial 2. SGT Baker began firing toward those muzzle flashes (see Figure 11); in accordance with their combat action drills, the Rangers manning the machine guns followed his lead and did the same.²³

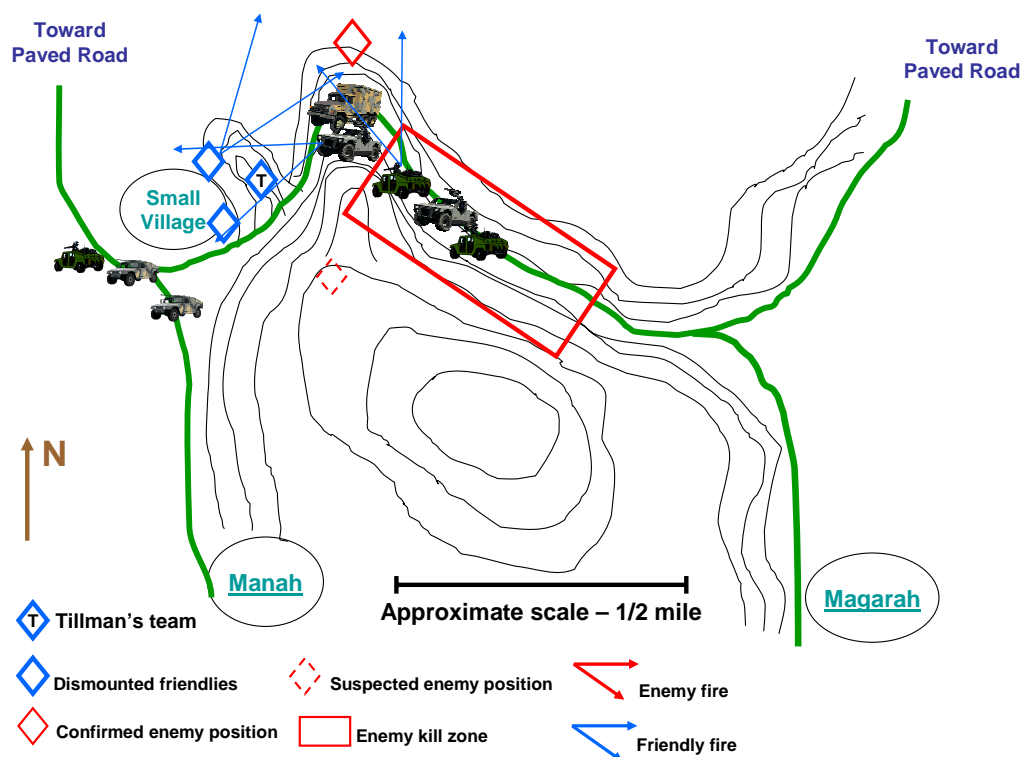


Figure 11. Friendly Fire Toward the Ridgeline

The dismounted Rangers in Serial 1 began to take fire but did not immediately realize it was coming from Serial 2.²⁴ Radio communications were still poor, and the decreasing light – not yet dark enough for night vision goggles²⁵ – made it difficult for the still-mounted Rangers in Serial 2 to clearly identify their targets.

Moments later, the Serial 1 Rangers recognized the fire was from Serial 2. CPL Tillman and others attempted hand and arm signals to stop the fire. CPL Tillman also threw a smoke grenade and someone else fired a pen-flare – with no effect on the incoming fire.²⁶ By this time the lead and other vehicles of Serial 2 had passed the Afghani truck and were continuing to fire at the ridgeline (See Figure 12).

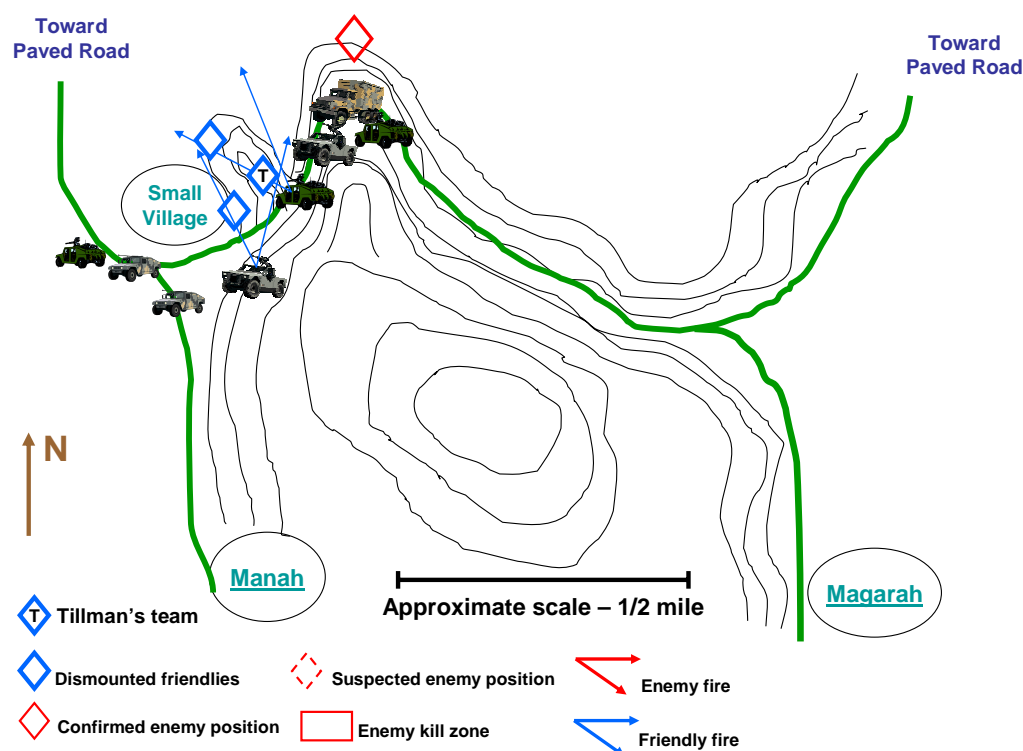


Figure 12. Continued Friendly Fire

SGT Baker saw the AMF soldier who was co-located with CPL Tillman, but later testified he believed him to be local Afghan firing an AK-47 toward Serial 2. He fired at the AMF soldier, killing him.²⁷ Again, the other Rangers on his vehicle fired their weapons at the same location, killing CPL Tillman.²⁸ The lead vehicle continued firing until the M-2 ran out of ammunition. Some of the fire went into the small village, wounding 1LT Uthlaut and SPC Jade Lane, his radio operator.

The driver of SGT Baker's HMMWV had by this time seen Serial 1's vehicles stopped ahead of them. He had attempted to stop the firing by yelling, "Friendlies on top", but had not been heard over the noise of the firing in the canyon.²⁹ Another AMF soldier, who had been with the Serial 1 vehicles, ran to SGT Baker's vehicle and told them to cease firing. The entire engagement lasted fourteen minutes.³⁰ It resulted in two friendly killed in action (KIA), CPL Tillman and the AMF soldier, and two wounded in action (WIA), 1LT Uthlaut and SPC Lane.

The Immediate Aftermath

Though most of the platoon learned within minutes of the friendly casualties, it was not immediately clear that those casualties were caused by the platoon's own fire. The loud sounds of the firing in the canyon, the clearly visible muzzle flashes high on the canyon walls, the ruggedness of the terrain, the worsening light conditions, the poor communications, and the lack of clear understanding about each serial's location all led to confusion. 1LT Uthlaut believed he'd been wounded by enemy fire for more than a week and a half after the event. It was only after investigating officers reviewed the event with him that he realized what had actually happened.³¹

SPC Kevin Tillman, who had been near the tail end of Serial 2, did not learn his brother had been killed until about forty-five minutes or so after the firing ceased. By that time, the platoon had set up security around the general area and Kevin was placed in a security position near the small village.³²

CPL Pat Tillman was evacuated by helicopter to the field hospital at FOB Salerno, where he was pronounced dead at 1950 on the 22 April. Rangers who saw his body at the scene said it was clear he had been killed instantly by three bullet wounds to his forehead.³³

1LT Uthlaut and SPC Lane were also medically evacuated by helicopter,³⁴ and SPC Kevin Tillman was taken out as well.³⁵ The rest of the platoon remained in the area overnight.

PFC O'Neal, who had been nearest to CPL Tillman when he died, told the company first sergeant that night that he suspected fratricide.³⁶ The first sergeant told CPT Saunders, the company commander, about PFC O'Neal's suspicions shortly thereafter.³⁷

Starting on 23 April, actions took place that would damage the credibility of the Army and DoD with CPL Tillman's family members. According to sworn statements, many of those actions were well-intentioned and intended to find the truth or protect the family from needless pain and suffering.³⁸ Nevertheless, the actions themselves violated virtually all of the specific procedures in place for events of this nature.

Required Actions

DoD and the Armed Services have specific guidelines in place for actions to be taken after suspected fratricides. Those actions generally have two purposes: 1) the death was an accident that needs to be investigated in order to prevent similar accidents in the future; and 2) the serious nature of the event requires an investigation to determine if there are potential legal implications such as criminal misconduct or negligence. There are also specific next of kin (NOK) notification requirements designed to ensure that family members are notified of their loss in the most humane and compassionate manner possible.

DoD Instruction (DoDI) 6055.7, *Accident Investigation, Reporting, and Record Keeping*, requires that, “For all accidents falling within the definition of Friendly Fire, the Combatant Commander [in this case, Commander U.S. Central Command] will convene a legal investigation to determine the facts of the incident and guide further action. In consultation with the Combatant Commander, Service or other commanders may convene a safety investigation as required.”³⁹ DoDI 1300.18, *Military Personnel Casualty Matters, Policies, and Procedures*, states that the notification of NOK will include “[a]ll facts and circumstances on the casualty incident known at the time....”⁴⁰ It adds that as “additional information becomes available, the Military Service concerned shall inform the NOK ...”⁴¹

The Services have added their own requirements. For example, Marine Corps Order (MCO) P3040.4E, *Marine Corps Casualty Procedures Manual*, requires investigations, governed by JAGINST 5800.7, *Manual of the Judge Advocate General* (JAGMAN), “in possible friendly fire incidents” where death occurred.⁴² MCO P5102.1B, *Navy & Marine Corps Mishap and Safety Investigation, Reporting, and Record Keeping Manual*, says that all injury or death caused “by ‘friendly fire’ is considered a mishap”, and the same MCO requires that any Class A mishap – a mishap involving a fatality – be investigated by a Safety Investigation Board (SIB) with a Safety Investigation Report (SIREP) completed within thirty days.⁴³

The Marine Corps also has strict guidelines with respect to incident reporting and NOK notification. MCO 5100.29A, *Marine Corps Safety Program*, requires that

“Commanders will ensure all serious mishaps (Class A and B) are briefed to the first general officer in the chain of command within seven days.... The first general officer will brief his chain of command and the ACMC on or before the eighth day following a serious mishap....”⁴⁴ Discussing casualty reporting, MCO P3040.4E states, “When a Marine is known or suspected of being killed or wounded as a result of friendly fire, so state in the PCR [Personal Casualty Report], and give as many details as possible. Actions taken to impede the disclosure of this information will not be tolerated.”⁴⁵

The Army has similar requirements for investigations and NOK notification, some of which have been updated because of the CPL Tillman incident. At the time of CPL Tillman’s death, Army Regulation (AR) 600-8-1, *Personal Affairs, Army Casualty Operations/Assistance/ Insurance*, required that fatal accidents have both safety and legal investigations, and further specified that, “All suspected friendly fire incidents will require an AR 15-6 investigation. ... [by] a board of officers... appointed by the commander having general court martial jurisdiction....”⁴⁶ AR 15-6 also specified that only a general court martial convening authority (GCMCA) could appoint an investigation or board for incidents resulting in the death of one or more persons.⁴⁷

With respect to NOK notification, AR 600-8-1 required that casualty notifications be done in a prescribed format. For suspected friendly fire death cases, the NOK were to be notified that the soldier’s “. . . death is a result of suspected friendly fire. A formal investigation is being conducted. You will be further advised as additional information is received. . .”⁴⁸

In order to help ensure that investigations in death cases can determine what happened, there are also requirements related to the handling of remains and effects after a death. DoDI 5154.30, *Armed Forces Institute of Pathology Operations*, charges the Armed Forces Medical Examiner (AFME) to conduct forensic investigations – including autopsies – in all cases where an active duty service member is killed. It further directs that the AFME shall receive notification of the deaths of all service members on active duty, and shall have the authority to review all pertinent information, to include investigative reports, photographs, and evidence.⁴⁹ Additionally, Joint Publication (JP) 4-06, *Joint Tactics, Techniques, and Procedures for Mortuary Affairs in Joint Operations*, requires that serviceable government equipment be returned to the

appropriate supply activity, but “unserviceable equipment and all clothing are left on the remains.”⁵⁰

Post-Event Notifications

By early evening Pacific daylight time (PDT) on 22 April, Army notification teams notified CPL Tillman’s widow Marie – his primary NOK – and his parents that he had been “killed in action by enemy fire.”⁵¹

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| <ul style="list-style-type: none"> • 22 April 2004: <ul style="list-style-type: none"> – CPL Tillman’s death – Soldier tells First Sergeant he suspects fratricide – NOK notified of death “by enemy fire” – Chain of command notified of death and fratricide suspicions over next few days • 23 April: <ul style="list-style-type: none"> – First AR 15-6 investigation begins – Soldier burns body armor • 25 April: <ul style="list-style-type: none"> – Soldiers burn load-bearing vest and uniform • 28 April: <ul style="list-style-type: none"> – Silver Star recommendation submitted • 29 April: <ul style="list-style-type: none"> – P4 message says “highly possible” CPL Tillman died by fratricide – Silver Star approved • 3 May: <ul style="list-style-type: none"> – Memorial service; Silver Star presented • 4 May: <ul style="list-style-type: none"> – AR 15-6 completed – he died by friendly fire • 8 May: <ul style="list-style-type: none"> – Second AR 15-6 investigation begins • 16 May: <ul style="list-style-type: none"> – AR 15-6 completed – same conclusion | <ul style="list-style-type: none"> • 26, 27 May: <ul style="list-style-type: none"> – CPL Tillman’s brother, and then widow, briefed on investigation findings • 28 May: <ul style="list-style-type: none"> – CPL Tillman’s mother told of “friendly fire” by reporter – Investigation approved by Central Command • 29 May: <ul style="list-style-type: none"> – Army publicly acknowledges friendly fire • 17 August: <ul style="list-style-type: none"> – CPL Tillman’s widow requests safety investigation report; Army realizes it was never done • 8 November: <ul style="list-style-type: none"> – Third AR 15-6 investigation begins • 16 March 2005: <ul style="list-style-type: none"> – Army IG approves investigation • Spring: <ul style="list-style-type: none"> – Family complains to Congress • 9 August: <ul style="list-style-type: none"> – DoD IG begins investigation • 3 March 2006: <ul style="list-style-type: none"> – DoD IG tasks Army Criminal Investigations Command to help • 26 March 2007: <ul style="list-style-type: none"> – Investigation results briefed |
|--|---|

Figure 13. Key Event Timeline

Colonel (COL) Craig Nixon, the 75th Ranger Regiment Commander, made a conscious decision to “compartment” the suspicions about friendly fire – because he believed he owed the Tillman family “our best view of what had occurred on the ground in a very complicated situation... and get it to the family before it leaked to the press or came through some other route.”⁵² Still, the Ranger chain of command recognized it needed to report the incident and investigate it. Perhaps because of the “celebrity” nature of CPL Tillman’s pre-Army status, the report of the death itself went high up the chain very quickly, as evidenced by the fact the White House made a public statement

the day after his death about Tillman as “an inspiration both on and off the football field.”⁵³

In sworn testimony, Brigadier General (BG) Howard Yellen, Deputy Commander at the U.S. Army Special Operations Command (USASOC) (the Ranger Regiment’s administrative command), said he was informed by COL Nixon on 23 April about CPL Tillman’s death, and the initiation of a friendly fire investigation about twenty-four hours later. BG Yellen further stated that he told Lieutenant General (LTG) Kensinger, the USASOC Commanding General (CG), that same day about the friendly fire investigation.⁵⁴

On 29 April, Major General (MG) Stan McChrystal, the commander with operational control of the Rangers, sent a Personal For (P4) message to General (GEN) Abizaid, Commander United States Central Command (USCENTCOM), with info copies to GEN Brown, Commander U.S. Special Operations Command, and LTG Kensinger, U.S. Army Special Operations Command, to tell them a friendly fire investigation “will find that it is highly possible that Corporal Tillman was killed by friendly fire.”⁵⁵

By this point in time, seven days after CPL Tillman’s death, no one had notified any family member of those suspicions.

A month later, on 26 May, the 2d Battalion Commander briefed SPC Kevin Tillman on the results of the investigation. The next day he briefed CPL Tillman’s widow, Marie. This notification of the primary NOK that CPL Tillman had died by friendly fire took place thirty-five days after the initial notification, while U.S. Central Command was formally reviewing the investigation report.⁵⁶

The next day, 28 May, CPL Tillman’s mother, Mary, was called by a reporter when the story leaked.⁵⁷ On 29 May, the 2d Battalion Commander provided both of CPL Tillman’s parents with a briefing similar to the one he had given to Marie.⁵⁸ The same day, LTG Kensinger, held a short press conference at Fort Bragg, North Carolina, to confirm that CPL Tillman was killed by friendly fire.⁵⁹

Other Post-Event Actions

On 23 April, after several soldiers checked CPL Tillman's unserviceable Ranger Body Armor (RBA) for personal effects and sensitive items, a soldier burned the RBA, believing he was supposed to do so because of requirements in AR 735-5, *Policies and Procedures for Property Accountability*.⁶⁰ However, that regulation required the signature of a medical officer to dispose of "contaminated" equipment.⁶¹ Similarly, CPL Tillman's blood-stained MOLLE (Modular Lightweight Load-carrying Equipment) vest and uniform were burned on 25 April since they "were creating a potential biohazard",⁶² but again there was no authorization by a medical officer and there were no photographs or other evidentiary preservation steps taken. Though CPL Tillman's clothing apparently made it to the Combat Support Hospital (CSH)⁶³ where it was removed and returned to the Rangers, none of the clothing or other effects worn by CPL Tillman when he died ever made it to a medical examiner for use in an autopsy, and none of it was photographed.

In the meantime, other events were moving faster than the investigations. On 28 April, eight days after CPL Tillman's death, the Ranger Regiment's personnel NCO submitted a Silver Star recommendation for him into the Army awards system, with endorsements by COL Nixon and MG McChrystal.⁶⁴ It was a Ranger Regiment unwritten policy to present any posthumous awards to the family members before the Ranger was interred,⁶⁵ so the award was pushed upward as quickly as possible. That Silver Star recommendation, after some editing at Department of the Army, was approved the next day by Mr. Les Brownlee, Acting Secretary of the Army (See Citation at Appendix A).⁶⁶

Also, on 28 April the CBS television show "60 Minutes II" broadcasted the first story with photos of abuse from the Abu Ghraib prison near Baghdad.⁶⁷ Although clearly unrelated to CPL Tillman's death, this broadcast perhaps helped fuel later suspicions the Army was intentionally not telling the truth in order to focus attention on a more heroic story and divert it away from Abu Ghraib.

On 3 May, there was a large memorial service for CPL Tillman in his hometown of San Jose, CA. Approximately 3,000 people, including Army Rangers, Senator John McCain (R-AZ), and NFL Commissioner, Paul Tagliabue attended. California Governor

Arnold Schwarzenegger was represented by his wife, Maria Shriver. The family was presented with CPL Tillman's Silver Star and Purple Heart medals.⁶⁸ LTG Kensinger represented the Army at the ceremony and he made a conscious decision not to inform the Tillman family of the fratricide suspicions.⁶⁹

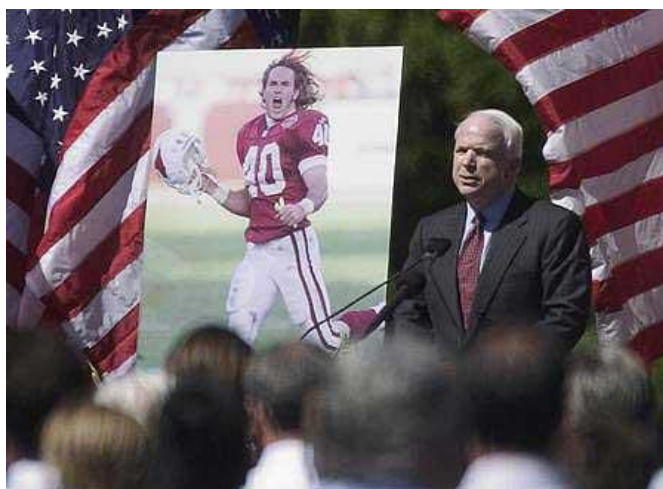


Figure 14. Senator McCain at Memorial Service

Initial Investigations

On the day after CPL Tillman died, the 2d Battalion Commander verbally appointed CPT Richard Scott to serve as an AR 15-6 investigating officer – though he did not have authority to appoint an investigating officer for such an incident. CPT Scott was specifically told that the potential for fratricide existed.⁷⁰ COL Nixon formally appointed CPT Scott by memorandum on 29 April, six days later.⁷¹ CPT Scott interviewed a number of the Rangers present at the incident but did not visit the site because of a number of factors.⁷² He submitted his investigation report on 4 May. The investigation concluded that CPL Tillman had died by fratricide and that at least three Rangers “demonstrated gross negligence”, including SGT Baker and the .50-cal and M-240 machine gunners.⁷³

COL Nixon reviewed CPT Scott's report and found it deficient because it did not address all the issues he had intended.⁷⁴ Therefore, COL Nixon appointed Lieutenant Colonel (LTC) Ralph Kauzlarich as an AR 15-6 investigating officer on 8 May to conduct

a second investigation.⁷⁵ As was true with the first investigation, however, per DoDI 6055.7 and AR 15-6, COL Nixon did not have the authority to appoint the investigating officer for such an incident since he was not a GCMCA and had not been directed to do so by the Combatant Commander. Nevertheless, LTC Kauzlarich pressed on and completed his investigation on the 16 May and submitted it to COL Nixon, who approved it the next day.⁷⁶ Like CPT Scott, LTC Kauzlarich also determined that CPL Tillman had died by friendly fire,⁷⁷ and he further recommended that seven Rangers be disciplined. These seven Rangers identified in the report were disciplined through various non-judicial punishments or administrative actions. Three received reprimands, three received company grade, Article 15 nonjudicial punishment, and one received field grade, Article 15 nonjudicial punishment. Five of the seven were also removed from the Ranger Regiment.⁷⁸

This investigation report, though authored by an officer who was improperly appointed, made its way through the chain of command to USCENTCOM, where it was approved by the Director of Operations, MajGen John Sattler, on behalf of GEN Abizaid, on 28 May 2004.⁷⁹ The anticipation of this formal approval led directly to the family notifications and public announcement mentioned above.

Mistrust and Additional Investigations

Over the next several months, the Tillman family began to dig deeper into the cause of CPL Tillman's death. Clearly dissatisfied with the Army's findings and publicly espousing suspicions of official cover-ups, they began to seek more clarity, principally through contacts with Senator McCain, who took an interest and sought information from Acting Secretary of the Army Brownlee.⁸⁰

On the 17 August, Marie, CPL Tillman's widow, requested through her Casualty Assistance Officer a copy of the required Army safety investigation report about the friendly fire incident. Army officials realized no one had initiated the report; no commander in the chain of command had reported the incident to the Army Safety Center as required by AR 385-40, *Accident Reporting and Records*, and other regulations. USASOC subsequently reported the incident to the Army Safety Center on 4 October 2004, and a five-member safety board completed its report in December.⁸¹

On 1 October, Mary Tillman, CPL Tillman's mother, received the autopsy report from the Armed Services Institute of Pathology.⁸² On the 5 and 7 October, she sent emails to Senator McCain with detailed questions about her son's death.⁸³ On the 13 October, Senator McCain forwarded those questions to Mr. Brownlee and requested an investigation. On 3 November, Mr. Brownlee directed LTG Kensinger to conduct another investigation and to answer Mrs. Tillman's questions. Five days later, LTG Kensinger appointed BG Gary Jones as the AR 15-6 investigating officer.⁸⁴

Over the next two months, BG Jones conducted more than sixty interviews and visited the site in Afghanistan, where he took measurements and photographs, walked the canyon, ridgeline, and village, and tried to determine the specific origin of fire toward CPL Tillman's position.⁸⁵ BG Jones completed his investigation on 7 January 2005, with the primary findings that: 1) CPL Tillman died as a result of friendly fire directed at him by SGT Baker's vehicle; 2) there was no reluctance by the chain of command "to report the true facts of this incident"; 3) evidence such as the uniform and equipment worn by CPL Tillman was handled improperly ; 4) non-judicial punishments were imposed on seven Rangers for the incident; and 5) there were points of confusion in the regulatory guidance about who could appoint the investigating officer and how and when the friendly fire information should have been provided to the NOK.⁸⁶ BG Jones' report went through a USASOC legal review, was approved by LTG Kensinger on 10 January 2005, and was immediately forwarded to LTG Green, Army Inspector General (IG).⁸⁷

LTG Green's office reviewed the report and requested some additional work be done. BG Jones completed that work and returned the report to LTG Green, who determined on 16 March 2005 that all issues were fully addressed.⁸⁸

Over a two-day period, 31 March and 1 April, BG Jones briefed the Tillman family and answered questions.⁸⁹ Dissatisfied with the answers, CPL Tillman's parents separately sent correspondence complaining or asking for more information. Mary Tillman sent questions to Senator McCain, who had the Army respond. Pat Tillman, Sr., sent a letter to BG Jones accusing him of failing to properly investigate his son's death.⁹⁰

Both parents became more outspoken in their distrust of the government. In a front-page article in the Washington Post in late May, Mary Tillman was quoted as saying,

Pat had high ideals about the country; that's why he did what he did. The military let him down. The administration let him down. It was a sign of disrespect. The fact that he was the ultimate team player and he watched his own men kill him is absolutely heartbreaking and tragic. The fact that they lied about it afterward is disgusting.”

In the same article, CPL Tillman’s father said,

“After it happened, all the people in positions of authority went out of their way to script this. They purposely interfered with the investigation, they covered it up. I think they thought they could control it, and they realized that their recruiting efforts were going to go to hell in a handbasket if the truth about his death got out. They blew up their poster boy.”⁹¹

BG Jones forwarded the letter Mr. Tillman had written him to the Army IG, who forwarded it to the DoD Inspector General (DoD IG) on 2 June. Four days later, the Deputy IG for Investigations asked the Deputy IG for Investigative Policy and Oversight to review the matter. In late July, Mary Tillman sent questions to Representative Mike Honda (D-CA) that were forwarded to DoD.⁹² On 9 August, the DoD IG announced it would conduct a review of the Army’s handling of the Tillman incident.⁹³

The DoD IG tasked the U.S. Army Criminal Investigations Command (CID) on 6 March 2006, to open a criminal investigation into the deaths of CPL Tillman and the AMF soldier, and the wounding of 1LT Uthlaut and SPC Lane.⁹⁴ Staff members and investigators visited the site of CPL Tillman’s death in April, a visit timed to coincide with the date of CPL Tillman’s death two years earlier.⁹⁵

While that investigation proceeded, the Tillman family continued to voice their mistrust of the military’s handling of the incident. CPL Tillman’s brother Kevin, who completed his enlistment in July 2006, wrote an anti-war piece for Truthdig.com later that year. His comments included, “Somehow, the same incompetent, narcissistic,

virtueless, vacuous, malicious criminals are still in charge of this country. Somehow, this is tolerated. Somehow, nobody is accountable for this.” And, “Somehow, the more soldiers that die, the more legitimate the illegal invasion becomes.”⁹⁶

Having completed their investigations, the DoD IG and CID held a joint press conference on 26 March 2007, more than eighteen months after the DoD IG had announced it would conduct a review. Together, the two organizations interviewed over 100 witnesses and worked over 20,000 staff hours.⁹⁷

The CID portion of the investigation “determined that neither negligent homicide or aggravated assault occurred in the shooting deaths and woundings of CPL Tillman and the others”. It added that the Army Crime Lab and the Picatinny Arsenal Lab results supported the findings that “CPL Tillman’s death was the result of friendly fire. The death was accidental.”⁹⁸

The DoD IG portion of the investigation focused on the adequacy of previous investigations, the NOK notification, and the accuracy of the documentation used to support the Silver Star medal. The IG concluded that “despite shortcomings, each investigation established the basic facts for CPL Tillman’s death, that it was caused by friendly fire.” The IG also highlighted, however, numerous deficiencies, such as the improper appointments of investigating officers and failures to visit the site in the first two investigations, and failure to assess the chain of command’s responsibilities to comply with regulatory requirements in the third investigation.⁹⁹

It also found that several officers failed in their responsibilities to notify the NOK about friendly fire suspicions, and LTG Kensinger “misled the third investigating officer and [the IG] office when he denied he knew friendly fire was suspected before the memorial service....” Finally, the DoD IG concluded that “responsible officials failed to comply with Army military war regulations when they submitted a Silver Star recommendation that included inaccurate information and a misleading citation that implied CPL Tillman died of enemy fire.”¹⁰⁰

Recommendations and Results

The DoD IG made two major recommendations. First, it recommended that the Secretary of the Army take appropriate corrective action with respect to the nine officers,

four of whom were general officers, “identified as accountable for the regulatory violations and errors in judgment....” Second, it recommended that the Army initiate a review of the Silver Star award to ensure it met regulatory requirements.¹⁰¹

Following the release of the investigation results, the family remained dissatisfied. Mary Tillman made a statement on the same day as the joint press conference. She began it by saying, “The briefing we just received was shamefully unacceptable.” She added,

The characterization of criminal negligence, professional misconduct, battlefield incompetence, concealment and destruction of evidence, deliberate deception, and conspiracy to deceive, are not “missteps.” . . . The entire military, we believe, compelled by the Secretary of Defense’s office, was seeking to accentuate the positive and eliminate the negative, as it was embroiled in a huge tactical setback in Iraq in April 2004, and as the Pentagon was preparing to deal with the public affairs crisis engendered by the about-to-be-revealed horror stories from Abu Ghraib.

She called for help from Congress and then ended her statement by declaring, “Once again, we have been used as props in a Pentagon public relations exercise.”¹⁰²

Still, the Army pressed ahead with the DoD IG recommendations. Secretary of the Army Pete Geren directed GEN William Wallace to conduct a review of the officers mentioned in the DoD IG report. GEN Wallace did review the actions of the nine officers, and on 31 July 2007, the Army announced his determinations and actions taken. First, LTG (now retired) Kensinger received a written reprimand, a written censure, and will go before an Army Grade Determination Review Board; Secretary Geren also issued a written censure citing LTG Kensinger’s failure of leadership. Second, GEN Wallace determined no action was warranted against now-LTG McChrystal. Third, BG (now retired) Jones received a written memorandum of concern. Fourth, now-BG Nixon received a written memorandum of concern. Finally, GEN Wallace decided to take undisclosed action against three of the five remaining officers who were colonels or below and whose names were not revealed.¹⁰³



Figure 15. CPL Pat Tillman, Army Ranger

Questions for Discussion

1. An event such as CPL Tillman's fratricide death can have both immediate and long-term impacts on the units, individuals, and families involved. While such an event is tragic, there are specific procedures in place to help ensure leaders take actions that have been time-tested for the best overall results. Accordingly, post-event actions are critically important. Clearly, the environment and accompanying pressures of combat impact how leaders will react to a friendly fire situation.

- How can a leader know he is doing the right thing after such an incident?
- What safeguards or sources of information are there to help a leader make the best decisions?
- How and where can a leader check to make sure he "thought of everything?"
- What are some of the checks and balances to help a leader and subordinates through such an event?

2. Post-event actions, even those that are well intentioned, can be very damaging if handled poorly. In this case, the family members, to include the brother who served honorably in combat, have assumed very hostile attitudes toward DoD and many others who serve under its authority.

- How do leaders' actions and decisions after such an event affect perceptions about the handling of the event?
- How can leaders ensure the chain of information flow is kept open and used in a timely fashion?
- What can leaders do to ensure their "good intentions" will be backed by the best possible results?
- Several of the leaders involved in the post-event decisions were still engaged in planning and conducting combat operations. Does that mitigate their decisions to compartmentalize information from the family, and if so, how?

3. Leaders recognize there are consequences for both honest and dishonest answers. In this case, seemingly good intentions led officers down paths where their honesty was openly questioned by the family, after those officers rationalized their approach as the best for all involved.

- Are there times when leaders should try to protect someone from eventual bad news? If yes, what's the counter to withholding potentially bad news?
- How does the old adage, "Bad news doesn't get better with age" apply here?
- One officer stated he withheld information from the family to avoid having them get bad information from the press, yet that's exactly what happened. How else might leaders handle this type of situation? How likely is it that military leaders can influence what leaks to the press?
- Sometimes the consequences for an honest answer may be painful, such as the knowledge a loved one was killed by his own unit. But the consequences of finding it out later are no better and as in this case, may be seen as evidence of a cover-up. How can leaders prepare themselves and their units to honestly reveal such bad news?

4. Fratricide, because of its very nature – accidentally killing your own troops – may cause traumatic impacts on the proper functioning of any military organization.

- How does such a tragic accident affect a unit?

- In units that pride themselves as being among the best at the profession of arms, how much more might an event like this impact the unit and its individuals?
- How might the unit members' impressions of the unit – such as their belief in its elite status – affect post-event actions?
- What can leaders do to lessen the impact of such an event on the unit, and on the family?

5. CPL Pat Tillman was obviously not a typical Army recruit. His enlistment was heralded in national sports media and generally seen as a great patriotic example. He specifically chose to join one of the Army's most elite units. And he became the first NFL player to die in combat since Bob Kalsu of the Buffalo Bills was killed in Vietnam in 1970. Pat Tillman went out of his way to avoid being a celebrity in the Army, but that did not change his pre-Army status.

- How do you think CPL Tillman's fame affected decisions that were made during the timeframe of the incident?
- How might celebrity status affect the way a unit responds to such an incident?

6. While the Ranger policy of presenting posthumous awards before casualties are interred may be commendable, what kind of additional problems might that create? How might such problems be avoided?

Appendix A: Silver Star Citation

The Silver Star Citation was approved by HQ, Department of the Army on 29 April 2004, and the award was presented to CPL Tillman's family at the memorial service on 3 May.

For gallantry in action on 22 April 2004 against an armed enemy while serving as a Rifle Team Leader in support of Operation Enduring Freedom. Corporal Tillman put himself in the line of devastating enemy fire as he maneuvered his Fire Team to a covered position from which they could effectively employ their weapons on known enemy positions. While mortally wounded, his audacious leadership and courageous example under fire inspired his men to fight with great risk to their own personal safety, resulting in the enemy's withdrawal and his platoon's safe passage from the ambush kill zone. Corporal Tillman's personal courage, tactical expertise and competence directly contributed to this platoon's overall success and survival. Through his distinctive accomplishments, Corporal Tillman brought credit upon himself, the 75th Ranger Regiment, and the United States Army.

The DoD IG investigation found inaccuracies in this citation and recommended the Army conduct a review to determine if the award meets regulatory requirements. Army Secretary Pete Geren said on 26 March 2007 that the award will stand but the citation will be revised to reflect Tillman's "actions and the circumstances of that day."¹⁰⁴



Figure 16. Camp Tillman, Afghanistan

Appendix B: Scope of the Negative Impact

This appendix provides a brief summary of the scope of the numbers of investigations and amount of evidence compiled in order to determine the truth about CPL Tillman's death. The massive amounts of hours put into this effort provide added emphasis to the importance that leaders take a deep breath, weigh the consequences of actions, and ensure they are following the prescribed policies and procedures before they push ahead and create a larger problem.

This case study found that there have been, to date, six investigations about CPL Tillman's death. One by CPT Scott, one by LTC Kauzlarich, one by BG Jones, one by the Army Safety Center, one by the U.S. Army Criminal Investigations Command, and one by the DoD Inspector General. The latter two took place concurrently under the lead of the DoD IG.

BG Jones' investigation took about four months total and involved questioning more than sixty witnesses and making a trip to Afghanistan. It amassed about 2,100 pages of exhibits such as sworn statements, sketches, and official evidentiary documents.

The investigations led by the DoD IG involved more than 100 witnesses and 20,000 hours of staff and investigator work, and was estimated by the IG to have cost a little more than \$2,000,000. It compiled another 1,100 pages of exhibits.

Appendix C: Event & Investigation Timeline

Though the IG was able to determine approximately how many hours investigators and staff spent on the CID and DoD IG investigations, there has been no determination of the hours of the other investigations, or of the time impact on the organizations involved. Undoubtedly, those impacts were significant.

2002	
May	Pat and Kevin Tillman enlist in the Army.
Summer-fall	Infantry Basic Training at Fort Benning, Georgia. Both complete the program Oct 2002, immediately followed by Basic Airborne Course, Fort Benning. They subsequently attend Ranger training.
2003	
Early	Assigned to 2d Battalion, 75th Ranger Regiment at Fort Lewis, WA. Assigned to 2d Platoon (the “Black Sheep”), A Company.
2004	
Early Apr	The Tillmans’ unit deployed from Fort Lewis to Afghanistan.
Apr	A Company conducts several days of sweep and search missions against remnants of the Taliban and al Qaeda in eastern Afghanistan.
Apr 20	A Company operates near the Pakistani border.
Apr 22	(All times are local times in Afghanistan.)
Early a.m.	Inoperable HMMWV is towed by another platoon vehicle.
1000-1200	Disabled HMMWV further damaged near the village of Magarah.
1600	1LT Uthlaut hires a local truck driver to tow the broken vehicle.
1730-1800	Platoon split into two serials. Serial 1 heads toward village of Manah. Serial 2 leaves fifteen to twenty minutes later, heading north, but due to rugged terrain, Serial 2 instead follows the same path as Serial 1.

1834-1848	Serial 2 comes under ambush while following in trace of Serial 1.
	Serial 1 squad leader instructs team leaders to maneuver Rangers onto a ridgeline that faces ambush site.
	CPL Pat Tillman leads PFC O'Neal and one Afghani soldier to help Serial 2. Tillman's group mistaken for the enemy and take friendly fire.
	CPL Tillman and the Afghan soldier are killed. 1LT Uthlaut and his radio operator, SPC Jade Lane, are wounded.
1950	Pat Tillman is pronounced dead at FOB Salerno.
Night	PFC O'Neal tells the company first sergeant that he suspects fratricide. The first sergeant tells the company commander about the fratricide suspicion the next morning.
EVENTS FOLLOWING CPL PAT TILLMAN'S DEATH	
Apr 23	2d Platoon completes operations in Manah, finding only women.
	2d Battalion Commander assigns CPT Richard Scott to serve as Army Regulation (AR) 15-6 investigating officer. CPT Scott is told of the possibility of fratricide.
	Officials announce CPL Tillman's death. The White House praises Tillman publicly.
	Soldier burns CPL Tillman's body armor.
Apr 25	CPL Tillman's uniform and vest are burned.
	(approx.) 75th Ranger Regiment CO reportedly tells BG Yellen that CPL Tillman's death was the subject of a possible friendly fire investigation. BG Yellen stated he informed LTG Kensinger, the USASOC CG, that same day.
Apr 28	Personnel NCO submits Silver Star recommendation for CPL Tillman – with endorsements by COL Craig Nixon and MG Stan McChrystal, CDRJTF.
	60 Minutes II shows photos depicting abuse in Iraq's Abu Ghraib prison.

Apr 29	MG McChrystal sends a “Personal For” (P4) message to GEN Abizaid, CDRUSCENTCOM, GEN Brown, CDRUSSOCOM, and LTG Philip R. Kensinger, Jr., CG, USASOC, telling them an investigation “will find that it is highly possible that Corporal Tillman was killed by friendly fire”.
	The Silver Star commendation is approved and signed by Mr. Les Brownlee, Acting Secretary of the Army.
Apr 30	The Army releases a statement announcing Tillman is being awarded the Silver Star and tells of heroic battlefield action ... Tillman also to be awarded Purple Heart and promoted posthumously from specialist to corporal.
	LTG Kensinger reportedly sees the P4 message from MG McChrystal.
May 3	Memorial service held for CPL Tillman in the Municipal Rose Garden, San Jose, CA, nearly 3,000 people, including Rangers and Army officials, attend the live televised service. LTG Kensinger represents the Army.
May 4	First AR 15-6 investigation report delivered by CPT Scott; determines CPL Tillman died by friendly fire and the soldiers involved in the shooting had committed gross negligence.
May 8	COL Nixon appoints LTC Ralph Kauzlarich to conduct a second, more thorough AR 15-6 investigation.
May 16	LTC Kauzlarich completes his investigation.
May 17	LTC Kauzlarich’s investigation is approved by COL Nixon. The investigation finds that CPL Tillman was killed by friendly fire.
May 25	USCENTCOM attorneys aware friendly fire is suspected.
May 26	2d Battalion Commander briefs SPC Kevin Tillman on the investigation.
May 27	2d Battalion Commander, accompanied by SPC Kevin Tillman, provides CPL Tillman’s widow a detailed account of the suspected friendly fire incident.
May 28	CPL Tillman’s mother is notified of friendly fire/fratricide in a call from a reporter.

	GEN Abizaid's Director of Operations, MajGen John Sattler, approves findings of LTC Kauzlarich's AR 15-6 investigation.
May 29	2d Battalion Commander provides a detailed explanation to CPL Tillman's parents in California.
	Army acknowledges that friendly fire "probably" killed Tillman in an announcement issued by LTG Kensinger at Fort Bragg, NC.
16 Jun	The Tillman family travels to Fort Lewis, where COL Nixon provides a presentation of findings from LTC Kauzlarich's investigation.
Summer	Mary Tillman sends questions to Senator John McCain (R-AZ), who passes them to the Secretary of the Army for response.
17 Aug	CPL Tillman's widow requests a copy of the Army's safety investigation report about the friendly fire incident.
1 Oct	Autopsy report sent to Mary Tillman.
4 Oct	USASOC notifies the Army Safety Center about CPL Tillman's death.
3 Nov	Acting Secretary of the Army orders a third investigation.
8 Nov	LTG Kensinger appoints BG Gary Jones, CG of U.S. Army Special Forces Command, as the investigating officer.
16 Dec	USO Center groundbreaking ceremony at Bagram Air Base.
2005	
7 Jan	BG Jones issues investigative findings. Report says the Army knew almost immediately that CPL Tillman had been killed by friendly fire, but did not intentionally cover it up.
10 Jan	LTG Kensinger approves the investigation report and forwards it to LTG Stanley Green, the Army Inspector General (IG).
16 Mar	LTG Green determines AR 15-6 investigation addresses all issues.
31 Mar	BG Jones briefs the Tillman family on his investigation and findings.
1 Apr	Mary Tillman and her brother, Mike, return to further question BG Jones.
Spring	Mary Tillman sends questions to Senator McCain; Army responds in letter.
21 Apr	Pat Tillman's father writes BG Jones, painting his investigation as a cover-up and whitewash of the facts — lays out his theory about the shooting.

12 May	BG Jones refers Mr. Tillman's letter to LTG Green, the Army IG.
2 Jun	LTG Green refers Mr. Tillman's complaint letter to the Department of Defense (DoD) IG.
Jul	Kevin Tillman completes his three-year commitment and leaves the Army.
26 Jul	Mary Tillman sends questions to Representative Mike Honda, D-CA, which are forwarded to DoD.
9 Aug	DoD Inspector General's (IG) Office announces it will conduct a review of the Army's handling of the CPL Tillman incident.
2006	
3 Mar	Army's Criminal Investigations Command (CID) directed to open criminal investigation into the fratricide of CPL Tillman.
23 Mar	Letter sent to Secretary of Defense Donald Rumsfeld by Congressmen Dennis Kucinich (D-OH), Mike Honda (D-CA), Christopher Shays (R-CT), and Ike Skelton (D-MO) regarding their interest in the Tillman investigation.
Spring	Staff members and investigators from the DoD IG Office and the Army Criminal Investigations Command visit Afghanistan.
2007	
26 Mar	The DoD IG and the Army Criminal Investigations Command publish results of their reviews & conduct joint press briefing.
31 Jul	The Army announces censure of LTG Kensinger for "failure of leadership." Five other officers received administrative actions for roles in the post-event decisions and actions related to CPL Tillman's death.

Sources: Multiple. Principal data and format derived from ESPN's website, <http://sports.espn.go.com/espn/news/story?page=tillmantimeline>, with corrections identified from the DoD IG Report, and the US Army CID Investigation Report.



Figure 17. CPL Pat Tillman USO Center Groundbreaking

Comedian Robin Williams, quarterback John Elway, and others participated in the groundbreaking for the center, held at Bagram Air Base, Afghanistan, on 16 Dec 04. The center was funded through a \$250,000 donation from the National Football League.

End Notes

¹ The *Compact Oxford English Dictionary of Current English*.

² Matthew B. Stannard, "In Football and in Life, Tillman Was Determined, Independent," *San Francisco Chronicle*, 27 March 2007, A-7.

³ Online article, "Tillman Killed in Afghanistan", *Sports Illustrated website www.SI.com*, 23 Apr 2004.

⁴ <http://Sports.espn.go.com/nfl/players/stats?playerid=1605>.

⁵ *USA Today Salaries Databases*.

⁶ "Ex-NFL Star Tillman Makes 'Ultimate Sacrifice,'" NBC, MSNBC, and news services, 26 Apr 2004.

⁷ ESPN timeline at <http://sports.espn.go.com/espn/eticket/story?page=tillmantimeline>.

⁸ *Ibid.*

⁹ BG Gary Jones, "Army Regulation (AR) 15-6 Investigation – CPL Patrick Tillman," 7 Jan 2005, 14.

¹⁰ 1LT Uthlaut's statement to CID investigator, 22 Mar 2006, 1.

¹¹ Jones, 1.

¹² Uthlaut, 1.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ Uthlaut, 2.

¹⁶ *Ibid.*, and diagrams prepared by CPT Richard Scott and included in BG Jones' AR 15-6 investigation report.

¹⁷ ESPN timeline.

¹⁸ Redacted sworn statements originally part of CPT Scott's investigation – attached to sworn statement to BG Jones, dtd 18 Nov 2004.

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- ¹⁹ Ibid. , Also, from an original statement attributed to a Squad Leader in Serial 1, attached to CPT Scott's sworn statement.
- ²⁰ Uthlaut, 3.
- ²¹ Uthlaut, 5. Also, from original statements attached to CPT Scott's statement.
- ²² SPC Bryan O'Neal, original statement provided to CPT Scott, and sworn statement to BG Jones, 17 November 2004, to include a sketch of the incident site.
- ²³ Redacted sworn statements originally part of CPT Scott's investigation.
- ²⁴ Ibid.
- ²⁵ Uthlaut, sworn statement to BG Jones, 9 December 2004, 17.
- ²⁶ Redacted sworn statements originally part of CPT Scott's investigation.
- ²⁷ LTC Ralph Kauzlarich sworn statement to BG Jones, 13 November 2004, 58.
- ²⁸ SGT Greg Baker statement in CPT Scott's original investigation; attached to CPT Scott's sworn statement to BG Jones.
- ²⁹ Redacted driver statement in CPT Scott's original investigation.
- ³⁰ BG Rodney Johnson, Special Defense Department Briefing, "Inspector General Thomas Gimble Reports on the Death of Corporal Patrick Tillman in Afghanistan," 26 March 2007.
- ³¹ Uthlaut, statement to BG Jones, 11.
- ³² SPC Kevin Tillman, sworn statement to BG Jones, 16 November 2004, 28-29.
- ³³ Redacted sworn statements originally part of CPT Scott's investigation.
- ³⁴ Uthlaut, statement to CID, 4.
- ³⁵ Tillman, statement to BG Jones, 29.
- ³⁶ O'Neal, statement to BG Jones, marked p. 787 of exhibits.
- ³⁷ Jones, 9.
- ³⁸ Inspector General (IG), U.S. Department of Defense, "Review of Matters Related to the Death of Corporal Patrick Tillman, U.S. Army," Report Number IPO2007E001, 26 March 2007, 43. Also, Kauzlarich, 48-49.
- ³⁹ DoDI 6055.7, Section E4.7, "Investigating Friendly Fire Accidents," 3 October 2000.
- ⁴⁰ DoDI 1300.18, Subparagraph 6.1.1.2, 12 December 2000, quoted in IG, 41.
- ⁴¹ Ibid., Subparagraph 6.1.2.4.
- ⁴² MCO P3040.4E, Paragraph 8306.1, 27 February 2003.
- ⁴³ MCO P5102.1B, Figure 5-1 and p. GI-8, 7 January 2005.
- ⁴⁴ MCO 5100.29A, Subparagraph 4.a.(1)(e), 1 July 2004; Per MCO P5102.1B, Class B accidents are those that include permanent partial disability, hospitalization of three or more personnel, or property damage between \$20K and \$1M.
- ⁴⁵ MCO P3040.4E, Subparagraph 3000.5.
- ⁴⁶ IG, 10.
- ⁴⁷ Ibid., p. 8. AR 15-6, *Procedures for Investigating Officers and Boards of Officers*, establishes Army procedures for administrative investigations and boards that are not specifically authorized by any other directive.
- ⁴⁸ AR 600-8-1, Subparagraph 4-13.a.(4)(b), 20 October 1994.
- ⁴⁹ DoDI 5154.30, Paragraph E2.2.6., 18 March 2003.
- ⁵⁰ Joint Pub 4-06, Appendix B, Subparagraph 4.a., 28 August 1996.
- ⁵¹ IG, p.43.
- ⁵² Ibid.
- ⁵³ Mike Haskey, "Ex-NFL Player Tillman Dies during Military Action in Afghanistan", *Associated Press*, 23 April 2004.
- ⁵⁴ IG, 39.
- ⁵⁵ Jones, 10.
- ⁵⁶ ESPN timeline.
- ⁵⁷ IG, Appendix B timeline.
- ⁵⁸ Ibid.
- ⁵⁹ USASOC News Service, Press Release Number 040529-01, 29 May 2004.
- ⁶⁰ Jones, 13.
- ⁶¹ AR 735-5, Paragraph 14-9.b., 10 June 2002.

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- ⁶² Jones, 13.
⁶³ Ibid.
⁶⁴ IG, 53.
⁶⁵ Kauzlarich, 49.
⁶⁶ IG, 54.
⁶⁷ Online article, "Abuse of Iraqi POWs by GIs Probed," www.cbsnews.com, 28 April 2007.
⁶⁸ May Wong, "Pat Tillman, ex-NFL Player Killed in Afghanistan, Remembered in Hometown," *Associated Press*, 4 May 2004.
⁶⁹ IG, 44.
⁷⁰ Scott, 2-3.
⁷¹ IG, 14.
⁷² IG, 16.
⁷³ Scott, 9 and 23-28.
⁷⁴ Jones, 11.
⁷⁵ IG, 29.
⁷⁶ Jones, 12.
⁷⁷ Kauzlarich, 59.
⁷⁸ Jones, 15-16.
⁷⁹ IG, 24.
⁸⁰ IG, Appendix B timeline.
⁸¹ IG, 25.
⁸² ESPN timeline.
⁸³ Questions and answers at Tab F, Jones Report.
⁸⁴ IG, Appendix B timeline.
⁸⁵ IG, 32-34.
⁸⁶ Jones, 5-20.
⁸⁷ IG, Appendix B timeline.
⁸⁸ Ibid.
⁸⁹ ESPN timeline.
⁹⁰ IG, Appendix B timeline.
⁹¹ Josh White, "Tillman's Parents Are Critical Of Army", *Washington Post*, 23 May 2005, A01.
⁹² IG, Appendix B timeline.
⁹³ ESPN timeline.
⁹⁴ IG, Appendix B timeline.
⁹⁵ Johnson, Special Defense Department Briefing.
⁹⁶ *Associated Press*, "Pat Tillman's Brother Kevin Speaks out against War", 22 October 2006.
⁹⁷ Thomas Gimble, Special Defense Department Briefing, "Inspector General Thomas Gimble Reports on the Death of Corporal Patrick Tillman in Afghanistan," 26 March 2007.
⁹⁸ Johnson, Special Defense Department Briefing.
⁹⁹ Gimble, Special Defense Department Briefing.
¹⁰⁰ Ibid.
¹⁰¹ Ibid. , Also IG, 61.
¹⁰² Mary Tillman, public statement, 26 March 2007, documented online at <http://sports.espn.go.com/nfl/news/story?id=2813963>.
¹⁰³ "Army Announces Results of Further Review of Reports Related to Death of CPL Patrick Tillman", U.S. Army News Release, 31 July 2007.
¹⁰⁴ Online article, "Officers Face Discipline in Tillman's Death," www.CNN.com, 27 March 2007.

Case Study 8: The Strategic Corporal -- Jason Dunham in Iraq

Case Summary: A Marine's generosity and empathy towards his fellow Marines is illustrated in the actions for which he earns the Medal of Honor, and – more importantly – in his daily life. His last days, seen through the eyes of family and friends, provide a reflection of a Corps whose values are made evident when its Marines respond in kind to Dunham and his loved ones.

Discussion Topics: Courage, Loyalty, Unselfishness

Target Audience: All Marines

Purpose: This case study, focuses on combat leadership and an act of tremendous heroism, but it also seeks to focus attention on leadership and actions far from the battlefield. It looks at the loyalty and love for Marines and their families by their military comrades, Marines, soldiers, sailors and airmen, who care for them when they are wounded or killed.

Discussion Leader Notes:

Table of Contents

Medal of Honor Citation for Corporal Jason L. Dunham.....	160
Introduction	161
Corporal Jason Dunham	162
Iraq.....	163
The Ambush.....	168
The Mission.....	165
Corporal Dunham's Actions.....	171
The Grenade	171
Initial Medical Care.....	174
Informing the Family.....	177
First Leg of the Trip Home.....	178
Caring for the Family	178
Corporal Dunham's Last Hours	179
Honors for a Hero.....	181
Lasting Legacy	182
Questions for Discussion.....	183
Appendix A: President's Remarks at the White House.....	186
End Notes	189

List of Figures

Figure 1. Corporal Jason Dunham	161
Figure 2. Karabilah	164
Figure 3. Husaybah - Karabilah Area	165
Figure 4. Battalion Commander's Convoy	166
Figure 5. The Ambush	167
Figure 6. The H-K Triangle	169
Figure 7. Corporal Dunham's Route	170
Figure 8. Scene of Corporal Dunham's Actions	171
Figure 9. Reenactment of Corporal Dunham's Actions (1)	172
Figure 10. Reenactment of Corporal Dunham's Actions (2)	173
Figure 11. Mills Bomb Grenade	173
Figure 12. Captain Gibson	175
Figure 13. Corporal Dunham's Helmet	176
Figure 14. Kilo Company 3/7	181
Figure 16. The Dunham Family with President Bush	188

Medal of Honor Citation for Corporal Jason L. Dunham

The President of the United States in the name of the Congress takes pride in presenting the Medal of Honor posthumously to Corporal Jason L. Dunham, United States Marine Corps for service as set forth in the following citation:

For conspicuous gallantry and intrepidity at the risk of his life above and beyond the call of duty while serving as a Rifle Squad Leader, 4th Platoon, Company K, Third Battalion, Seventh Marines (Reinforced), Regimental Combat Team 7, First Marine Division (Reinforced), on 14 April 2004. Corporal Dunham's squad was conducting a reconnaissance mission in the town of Karabilah, Iraq, when they heard rocket propelled grenade and small arms fire approximately two kilometers to their west. Corporal Dunham led his Combined Anti-Armor Team towards the engagement to provide fire support to their Battalion Commander's convoy, which had been ambushed as it was traveling to Camp Husaybah. As Corporal Dunham and his Marines advanced, they quickly began to receive enemy fire. Corporal Dunham ordered his squad to dismount their vehicles and led one of his fire teams on foot several blocks south of the ambushed convoy. Discovering seven Iraqi vehicles in a column attempting to depart, Corporal Dunham and his team stopped the vehicles to search them for weapons. As they approached the vehicles, an insurgent leaped out and attacked Corporal Dunham. Corporal Dunham wrestled the insurgent to the ground and in the ensuing struggle saw the insurgent release a grenade. Corporal Dunham immediately alerted his fellow Marines to the threat. Aware of the imminent danger and without hesitation, Corporal Dunham covered the grenade with his helmet and body, bearing the brunt of the explosion and shielding his Marines from the blast. In an ultimate and selfless act of bravery in which he was mortally wounded, he saved the lives of at least two fellow Marines. By his undaunted courage, intrepid fighting spirit, and unwavering devotion to duty, Corporal Dunham gallantly gave his life for his country, thereby reflecting great credit upon himself and upholding the highest traditions of the Marine Corps and United States Naval Service.



Figure 1. Corporal Jason Dunham

Introduction

Some people wonder all their lives if they've made a difference. The Marines don't have that problem. (Ronald Reagan)

This case study is based on the service and actions of Marine Corporal (Cpl) Jason Dunham and on actions that occurred after he was wounded. It focuses on his leadership and his courageous actions, actions for which he was awarded the Congressional Medal of Honor. As this case study was researched, it became evident that Cpl Dunham's actions also provided an opportunity to gain insight into the leadership and actions of those who care for our wounded. Their leadership and actions too often go unnoticed. This case study, therefore, focuses on combat leadership and an act of tremendous heroism, but it also seeks to focus attention on leadership and actions far from the battlefield. It looks at the loyalty and love for Marines and their families by their military comrades, Marines, soldiers, sailors and airmen, who care for them when they're wounded.

The case study highlights the impact of a "strategic corporal" on a unit and on the lives he touched; a strategic corporal whose effect was on those he led and influenced.

It also looks at other “strategic corporals,” many in support specialties, who stepped up to go beyond what was expected throughout Cpl Dunham’s journey home.

With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to bind up the nation's wounds, to care for him who shall have borne the battle and for his widow and his children.

(Abraham Lincoln in his Second Inaugural Address)

Corporal Jason Dunham

Leadership - the sum of those qualities of intellect, human understanding, and moral character that enables a person to inspire and to control a group of people successfully.

(LtGen John Archer Lejeune, Thirteenth Commandant of the Marine Corps)

Cpl Jason Dunham was born in the western New York town of Scio (population 1878) on the Marine Corps birthday in 1981.¹ Cpl Dunham excelled as an athlete, lettering in basketball and starring on the soccer and baseball teams; his .414 batting average still stands as the school record.²

Cpl Dunham displayed the traits of a leader from his earliest days. His mother, Deb Dunham, learned of one of his acts of kindness in a letter she received after his death. In the letter, a childhood friend described how Cpl Dunham went out of his way to console her when other children taunted her on a bus ride home. “All he did was sit with her on the bus,” his mother recalled. “He had a quiet way about doing the right thing.”³

Dunham enlisted in the Marine Corps via the Delayed Entry Program and graduated high school in 2000. He attended Recruit Training at Parris Island, South Carolina. He told his father, an Air Force veteran, “I work in the men’s department of the military.”⁴ A friend said, “He went in the Marine Corps, but people who’ve never done it can’t begin to understand what it means...to wear arguably the most honored uniform in the world, to be part of something larger and more noble than yourself. It gets into you. And it got into him. At least that’s what you figure from what happened.”⁵

Cpl Dunham executed permanent change of station orders from King's Bay, Georgia to Marine Corps Air Ground Combat Center, Twentynine Palms, California in the fall of 2003.⁶ He he was assigned to the 3rd Battalion, 7th Marine Regiment, which had recently returned from its deployment to Operation Iraqi Freedom I.⁷ Cpl Dunham was made 2d Squad Leader in 4th Platoon of Kilo Company.

Cpl Dunham immediately made a name for himself as a leader. Cpl Cervantes, a fellow Kilo Company Marine, described him as someone whose "presence just commanded respect. You wanted to give him your respect."⁸ Cpl Dunham described himself as a Marine who "leads by example and understands that people make mistakes."⁹ Lance Corporal (LCpl) Dean, a platoon mate, said "Cpl Dunham had a gift from God. Everybody who came in contact with him wanted to be like him. He was the toughest Marine but the nicest guy. Cpl Dunham was the kind of person everybody wants as their best friend. It's hard to explain in words."¹⁰

Cpl Dunham's battalion was alerted in late 2003 they would return to Iraq early in 2004. Cpl Dunham's enlistment would expire in July of 2004, but he was told he would go with the battalion for the beginning of the deployment.¹¹ Speaking to his buddies in a hotel room, he told them he was planning to extend his enlistment and stay in Iraq for the battalion's entire rotation. LCpl Dean recalls asking "Why?" He says that Cpl Dunham responded, "I want to make sure everyone makes it home alive. I want to be sure you go home alive."¹² Shortly after the battalion got to Iraq, Cpl Dunham extended his enlistment to complete the battalion's combat deployment.

Iraq

Fourth Platoon initially landed in Kuwait with the battalion and then moved to al Qa'im in western Iraq, 3rd Battalion's base, and then to Camp Husaybah on the Syrian border, arriving in March of 2004 (Figures 2 and 3).

On 3 April, Mustapha Yacoubi, an aide of Sadr, was arrested on suspicion of murder. The next day, demonstrations by Sadr supporters spiraled into riots in Baghdad, as well as Najaf, Nasiriyah and Amarah. Nine U.S. troops were killed. Combat continued on 5 April as Coalition Forces begin to surround Fallujah. On 8 April,

widespread fighting left nearly 500 Iraqis and thirty-six Americans dead in Fallujah. Sadr militias gained control of al Kut and Najaf. The next day, nine U.S. civilians were killed near Fallujah when their convoy was attacked.

It was against this background of a general and significant upsurge in violence that the actions of Cpl Dunham occurred. On 14 April 2004, Cpl Dunham was assigned to conduct a mission in Karabilah.

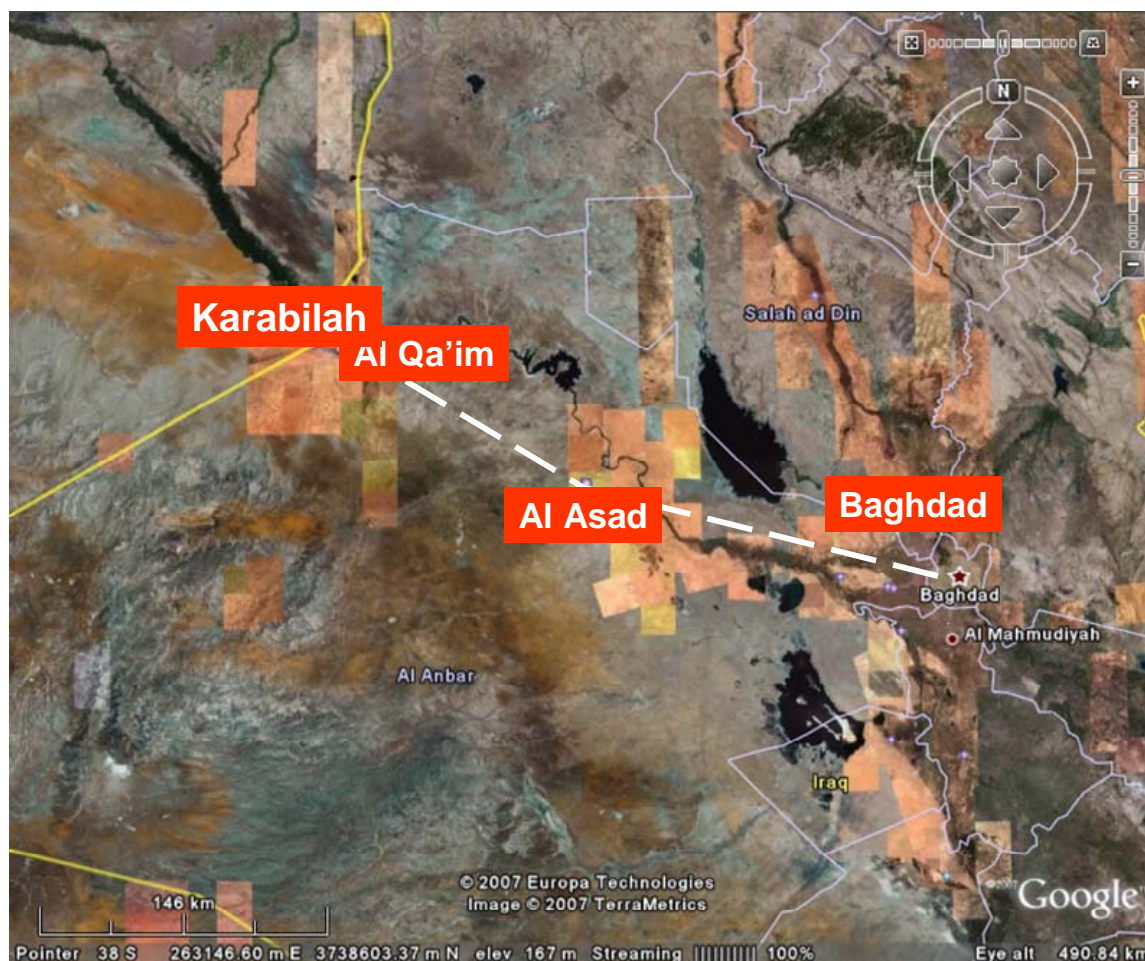


Figure 2. Karabilah

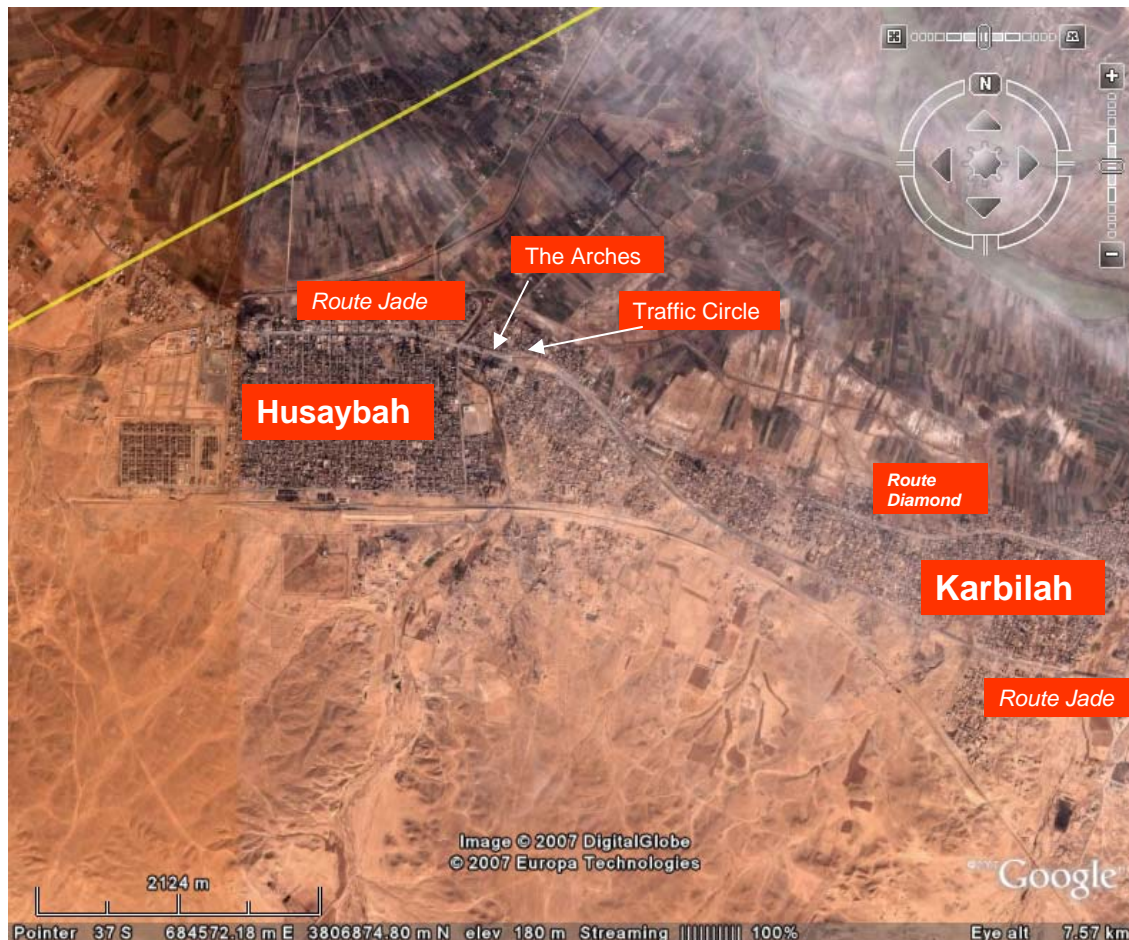


Figure 3. Husaybah - Karabilah Area

The Mission

Cpl Dunham was given the mission to conduct a HMMWV mounted reconnaissance patrol in Karabilah on the morning of 14 April.¹³ Cpl Dunham's patrol consisted of ten members of 2d squad, Captain (Capt) Trent Gibson, the K/3/7 Commander and Staff Sergeant (SSgt) John Ferguson, Platoon Sergeant for 4th Platoon. Including the vehicle crews, there were twenty-seven souls on the mission.¹⁴

Lieutenant Colonel (LtCol) Matt Lopez, the 3/7 Battalion Commander, would take six HMMWV's on a separate mission from the Battalion base at al Qa'im to the Karabilah police station, check out renovations the Marines had ordered and deliver \$70,000 in cash to the construction contractor if the work had been completed satisfactorily.¹⁵

LtCol Lopez's convoy would then depart Karabilah, follow the Iraq police chief west to the new Husaybah police station, and conduct a spot check of the U.S.-funded Iraqi police there.¹⁶ (Figure 3) LtCol Lopez departed the Karabilah police station around noon.

The Ambush

Lieutenant Colonel Lopez traveled in a convoy commanded by Major (Maj) Ezra Carbins, a Civil Affairs Officer. The convoy consisted of one armored HMMWV in the lead and five Up-Armored HMMWVs following in trace at fifty-meter intervals.¹⁷ At the last minute, wary of an ambush, LtCol Lopez altered the planned route, using Route Jade instead of the planned Route Diamond.¹⁸ (Figure 4).



Figure 4. Battalion Commander's Convoy

As the convoy moved west on Route Jade towards Husaybah, they saw two red star clusters arcing into the air ahead of them, one on the north and one on the south side of the road, followed moments later by a green star cluster. As the convoy approached a traffic circle, a group of Iraqi men scattered in a parking lot on the right side of the road.

Moments later, the Marines saw a flash off the right side of the road, in front of a mechanic's shop well ahead of their position.¹⁹ There was then a large explosion about 200 meters north of Route Jade, followed immediately by small arms fire and rocket-propelled grenade (RPG) fire originating from an ambush site both north and south of Route Jade. An estimated twenty insurgents occupied a V-shaped ambush site on the north side of Jade and were firing from inside abandoned buildings and behind walls into a 700 meter-wide kill zone.²⁰ An unknown number of gunmen fired from the vicinity of a mosque east of the traffic circle on the south side of Route Jade.



Figure 5. The Ambush

Maj Carbins halted his HMMWV and the Marines exited to the north side of Route Jade and assumed a support by fire position for the rest of the convoy. He reported seeing at least a dozen RPG's in flight in the first ten seconds of the ambush focused on the lead and trail vehicles of the convoy.²¹

LCpl Falah, LtCol Lopez's translator, was severely injured by a round that went through the stock of his M16, piercing his left bicep and damaging the nerves. He bled heavily and was in severe pain. LtCol Lopez was wounded in the back by a round that penetrated the left rear wheel well and traveled forward through his HMMWV. Another RPG flew through the back of LtCol Lopez's HMMWV without detonating.²²

LtCol Lopez's HMMWV made it through the traffic circle to the Arches. At this point, LtCol Lopez ordered his driver to take the HMMWV directly to Camp Husaybah, just over two miles away. The lieutenant colonel was concerned that LCpl Falah would bleed to death without immediate medical care. Two other HMMWVs followed LtCol Lopez: the fifth vehicle in the column (a driver with a Corpsman as A-driver) and the fourth vehicle, carrying the driver, Capt Lewis, the Staff Judge Advocate (SJA), and Private First Class (PFC) John Simenthal, as the gunner. PFC Simenthal was wounded by a fragment of the HMMWV door that was torn off when struck by enemy machine gun rounds. Capt Lewis was wounded in the left arm and in two spots in the left leg. The drivers sped back to Camp Husaybah.²³

Sergeant (Sgt) Hendricks was in the second HMMWV in the column and observed as Maj Carbins pulled his HMMWV over to the side of the road and dismounted his crew to protect the rest of the convoy. He also saw LtCol Lopez, Capt Lewis and the other HMMWVs move towards the Camp Husaybah landing zone (LZ). Sgt Hendricks took up a blocking position by the Arches.²⁴

Seeing the rest of the convoy pass, Maj Carbins got back into his HMMWV with his crew and moved to the Arches, where they rendezvoused with Sgt Hendricks and his Marines. (Figure 5)

Corporal Dunham's Actions

Cpl Dunham moved his patrol on foot to Route Diamond after the reconnaissance mission was completed where they remounted their waiting HMMWVs. They then moved northwest along Route Diamond toward the Arches. Capt Gibson, traveling with Cpl Dunham's patrol, heard radio traffic about the ambush of the battalion commander's convoy ahead.²⁵ The patrol came under RPG fire while traveling toward the ambush site along Route Diamond.

Cpl Dunham's Marines stopped their HMMWVs and dismounted just east of the traffic circle where Route Diamond met Route Jade. With the battalion commander's convoy through the circle by now, the Marines quickly questioned Iraqis in the vicinity of the traffic circle, one of whom indicated that the firing had come from the south, from the H-K Triangle.²⁶ (Figure 6).

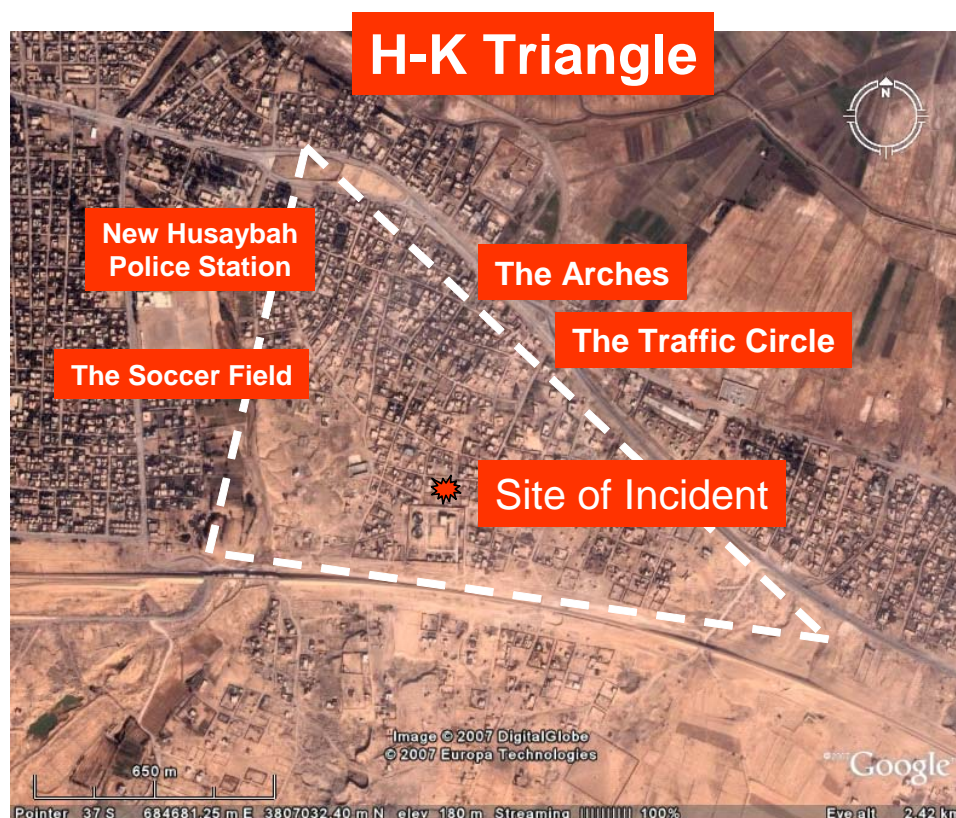


Figure 6. The H-K Triangle

Capt Gibson and Cpl Dunham got together between Route Diamond and Route Jade and formulated a hasty scheme of maneuver. The company commander directed the gun trucks to move around the neighborhood and set up blocking positions to the south of where they presumed the ambushers to be. Cpl Dunham's squad would move on foot through the H-K Triangle to hunt the ambushers. (Figure 7). Cpl Dunham split his squad into its two fire teams. Capt Gibson moved with LCpl Carbajal's fire team. Cpl Dunham and SSgt Ferguson stayed with LCpl Hampton's fire team. The two high back HMMWVs remained on Route Diamond. LCpl Castaneda remained behind to help provide security.



Figure 7. Corporal Dunham's Route

The Grenade

At about 1220, Cpl Dunham's Marines reached a cross street. On the left was an unfinished single story building and straight ahead, over the top of some buildings they could see the top of the water treatment plant. The dirt road in front of them was deeply rutted and was bordered on the north side by a stonewall. At the intersection they discovered a column of seven vehicles, occupied by Iraqi males, oriented to the east. The Iraqis were attempting to depart the area, but were blocked by a bus that failed to negotiate the turn.²⁷

The Marines moved toward the vehicles to inspect them and search for the attackers. Cpl Dunham and PFC Miller conducted a hasty search of the first vehicle. When complete, they moved past the second vehicle, which was being searched by LCpl Hampton. Cpl Dunham and PFC Miller moved to the third vehicle in line, a white Land Cruiser, about fifty meters from where the alley met the road (Figure 8). Cpl Dunham was on the driver's side and PFC Miller moved to the passenger side. PFC Miller saw the muzzles of AK-47s sticking out from under a floor mat.²⁸



Figure 8. Scene of Corporal Dunham's Actions

LCpl Hampton saw an Iraqi jump out of the vehicle and attack Cpl Dunham. PFC Miller quickly moved around the front of the vehicle to help Cpl Dunham subdue the insurgent. When Hampton arrived, Cpl Dunham had the insurgent on his back and he was punching him in the face. Hampton aimed his rifle, but hesitated, worried that he would hit PFC Miller. LCpl Hampton then raised his rifle to strike the Iraqi.²⁹

PFC Miller moved to support Cpl Dunham, unsheathing a collapsible police baton. Miller planted his left knee in the Iraqi's ribs. Bracing his left hand on Cpl Dunham's back, he hit the Iraqi in the forehead with the butt of the baton. The Iraqi kept fighting. PFC Miller struck the Iraqi again and then tried to use it to put a blood choke on the Iraqi's neck.³⁰ (Figures 9 and 10).



Figure 9. Reenactment of Corporal Dunham's Actions (1)



Figure 10. Reenactment of Corporal Dunham's Actions (2)

LCpl Sanders was about a dozen yards away when he heard Cpl Dunham yell “No, no, no – watch his hand.”³¹ The insurgent was holding a British Mills Bomb, a classic pineapple hand grenade (Figure 11).



Figure 11. Mills Bomb Grenade

LCpl Hampton noticed that Cpl Dunham’s helmet was off and his arms were criss-crossed over the top of it. Then came the explosion. LCpl Hampton was less than a meter away.³²

LCpl Hampton was hit by fragments and had his nose broken by the concussion. LCpl Hampton got up, checked his injuries, and staggered back toward the intersection where, holding his rifle in his uninjured right arm, he covered the Marines from possible attack from that direction.³³

PFC Miller was less than a meter away when the grenade detonated, with his police baton in the insurgent's throat and his left hand on Cpl Dunham's back. He took shrapnel to his face and the blast ruptured an eardrum. His right triceps was penetrated by a piece of shrapnel, cutting the brachial artery and his left arm was hit by five or six pieces of shrapnel. PFC Miller was thrown against a brick wall that was behind him.³⁴ PFC Miller got to his feet and assured SSgt Ferguson that he was all right."³⁵

LCpl Sanders, the radio operator, saw Cpl Dunham, PFC Miller and LCpl Hampton rocked by the explosion. He thought "They're all f-----g dead." Sanders came forward, covering Iraqis as he moved. He was stunned to see Miller and Hampton get to their feet.³⁶

SSgt Ferguson noticed Cpl Dunham's unmoving form, face down in the dirt. He yelled to another Marine, "Help me get my Marine out of there." LCpl Sanders and another Marine grabbed Cpl Dunham. As they dragged him to cover, an insurgent moved out from a corner and fired six to eight rounds at them. SSgt Ferguson returned fire and the two Marines moved Cpl Dunham to a covered position.³⁷

Initial Medical Care

Lance Corporal Sanders used his radio and called for a MEDEVAC. "One urgent."³⁸ First Lieutenant McManus had four HMMWVs six miles from the H-K Circle. He had been positioned there as a reaction force by LtCol Lopez several days earlier. Upon hearing LCpl Sanders' radio call for help, he guided his vehicles to Market Street and then turned south on East End. When they reached Route Train, they picked up two Corpsmen who were supporting another mission. They moved south, went around the water treatment plant, and then moved towards Cpl Dunham's position.³⁹

While the corpsmen performed first aid on Cpl Dunham in an attempt to stabilize him for transport, Gunnery Sergeant (GySgt) Fontecchio heard the call for a medevac

on his radio. He arrived with the two HMMWVs used earlier by Cpl Dunham's squad. The Marines quickly stripped the bed of the HMMWV and loaded Cpl Dunham into it.⁴⁰

GySgt Fontecchio told the corpsmen that he was taking Cpl Dunham to the MEDEVAC helo. The GySgt's HMMWV, escorted by two of the heavy gun HMMWVs went up Route Jade towards Camp Husaybah. When they arrived they were sent directly to Landing Zone (LZ) Parrot.⁴¹ At the LZ, medical personnel put a neck brace on Cpl Dunham and loaded him into an Army Blackhawk Dustoff helicopter for transport to al Qa'im.

Marines at the scene of the incident found two AK-47s and a second hand grenade in the Toyota. They also found a grenade pin on the floor of the vehicle. When Capt Gibson arrived at the scene he noticed a piece of shredded fabric on the ground. Then, by a stonewall, he found another piece, a larger one that had once been part of the left side of a Marine helmet. Across the street, they found the right half. He later said "The whole street was covered with Cpl Dunham's Kevlar. One half of his helmet was on either side of the street."⁴² Capt Gibson said "It's obvious in my mind. He put a helmet on that grenade."⁴³



Figure 12. Captain Gibson

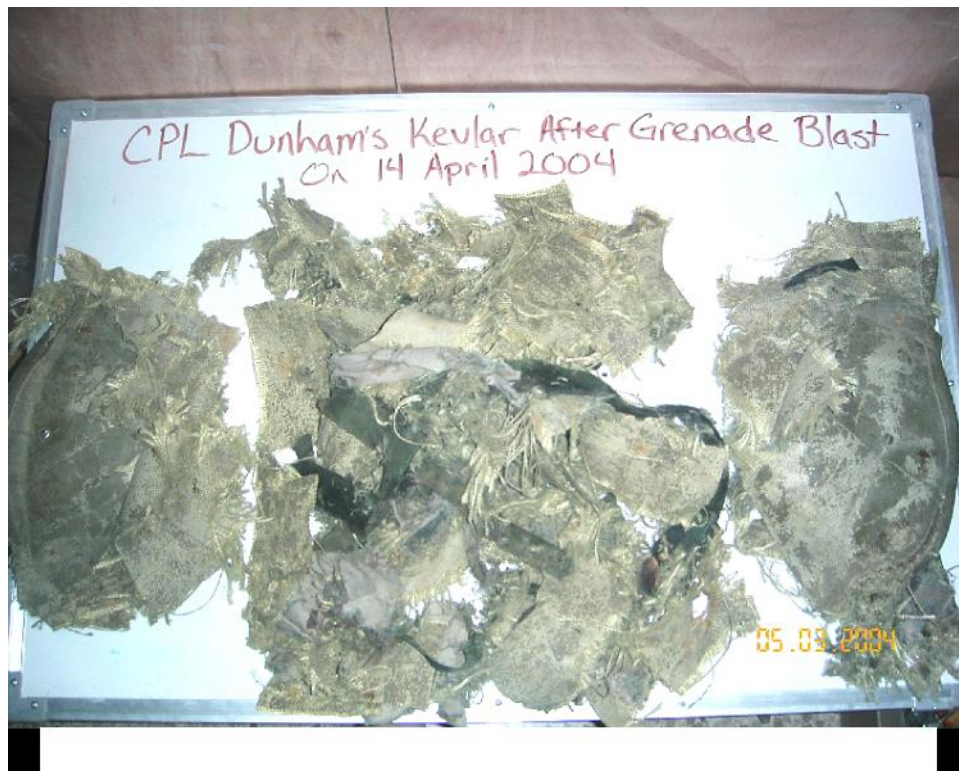


Figure 13. Corporal Dunham's Helmet

At 1245, the helicopter carrying Cpl Dunham landed at the MEDEVAC pad in al Qa'im. Doctors there assessed his injuries as they worked to stabilize him. Cpl Dunham had three penetrating wounds on the left side of his head. The doctors realized the injuries were beyond their capabilities and prepared Cpl Dunham for transport to al Asad. He was heavily sedated and a breathing tube was inserted.⁴⁴ At 1445, the Medevac Blackhawk took off for al Asad with Cpl Dunham aboard.⁴⁵

Lieutenant Commander (LCDR) Heidi Kraft was part of the al Asad medical team. Cpl Dunham's wounds were assessed to be mortal by the attending physicians and he was expected to perish soon. Cpl Dunham was placed in an area for expectant patients. LCDR Kraft monitored Cpl Dunham there and cared for him. As they adjusted Cpl Dunham's arms to try to make him more comfortable, Kraft felt him squeeze her hand. She reported to one of the surgeons, "He's been squeezing my hand in response to our voices." The medical staff reevaluated Cpl Dunham and at 1720, he was taken to Intensive Care and prepped for a MEDEVAC flight to the Combat Support Hospital

(CSH) in Baghdad. The Chaplain prayed for safety on the flight and for Divine guidance for the medical staff in Baghdad.⁴⁶

As Cpl Dunham was carried to the waiting helicopter, he grasped LCDR Kraft's hand so hard that she had to pry it free. She later wrote of her experience in a blog post. She described meeting the "one who threw himself on a grenade to save the men at his side...who will likely be the first Medal of Honor recipient in over 11 years." Later, in a section about things that were "Not Good" she related "And last, but not least, holding the hand of that dying Marine."⁴⁷ She wrote to her family,

The litter team loaded him in the bird and it took off. I stood there, frozen, watching the cloud of dust rise and the huge propeller lift them into the sky. They were joined by their attack helicopter escort, and together they made the turn and disappeared. I turned around. A large group of people had gathered around this remarkable patient and stood in quiet awe. The rest of the patients were either in surgery or on the ward. We could stop for a moment. I was then aware of my body, trembling at my knees, and I raised shaky hands to my face, without realizing I still had my gloves on. And then the tears came.⁴⁸

Cpl Dunham arrived in Baghdad at 1850. He was carried in and the CSH staff was told "We thought this guy was dead and he's not."⁴⁹ Cpl Dunham's condition was assessed and at 2050 he underwent surgery to relieve pressure on his brain caused by his injuries. He was in surgery for over two hours. Just after 2330, Cpl Dunham was moved to a bed in the intensive care ward.⁵⁰

Informing the Family

First Lieutenant (1stLt) Carlos Huerta was the 3rd Battalion Rear Detachment (Rear Det) Officer at Twentynine Palms. Part of his duties included the responsibility to inform family members when their Marine was injured. He had made 120 such calls.⁵¹

1stLt Huerta was informed of Cpl Dunham's injury at 1913 on 15 April (Pacific daylight time). He confirmed the information and informed Cpl Dunham's Dad, Dan

Dunham, about forty-five minutes later, (2300 eastern standard time) in Scio, New York, Cpl Dunham's home town. Dan called and informed Cpl Dunham's brother Justin.⁵² Deb, his mother, informed the other children.

The Dunhams prepared to fly to Germany to be by their son's side. Friends and neighbors, over the next few days, collected more than \$8,000.00 to help them.⁵³ 1st Lt Huerta counseled the Dunhams to wait until Cpl Dunham arrived at Bethesda National Naval Medical Center; he feared they might miss him when he was transferred from Germany.

First Leg of the Trip Home

On the 17 April, Cpl Dunham was readied for a flight to Balad for further transport to the Army Regional Medical Center in Landstuhl, Germany. 1st Lt Huerta called the Dunhams to advise them of Corporal Dunham's impending move. He called back later to advise them that he had arrived in Landstuhl, Germany.

Cpl Dunham arrived at Landstuhl at 1000 on 18 April. Sgt Justin McConnell from the Landstuhl Marine Liaison Office was there to meet him. He held Corporal Dunham's hand as he walked alongside the gurney on the way up to the intensive care unit. "I'm Sgt McConnell with the Marine liaison here. You're in Landstuhl, Germany. We're here to take care of you."⁵⁴

The Landstuhl nurses were impressed that the Marine Corps, alone among the armed services, had set up a liaison office to take care of its wounded.⁵⁵

Caring for the Family

1st Lt Huerta called the Dunhams on 20 April to advise them that Cpl Dunham would arrive at Andrews Air Force Base, Maryland, on 21 April and be taken to Bethesda National Naval Medical Center.

Early that morning Deb Dunham had received a call from a Buffalo, New York television reporter who passed along an e-mail from SSgt Brad Cress, a Marine from

the Buffalo area. He had seen a story about Cpl Dunham's injury on the station's web site and wrote offering assistance.⁵⁶

Initially reluctant to call a stranger, Deb Dunham called SSgt Cress who put her in touch with SSgt Miguel Cruz at Bethesda Marine Liaison. Less than twenty minutes later SSgt Cruz called back to tell the Dunhams that they had airline tickets waiting for them to fly from Rochester, New York to Washington, D.C. He had arranged transportation from the airport and lodging on the grounds of Bethesda.⁵⁷ Deb Dunham thanked SSgt Cruz and told him, "Your Mom taught you well." SSgt Cruz explained to Deb Dunham, "Things could be the other way around. It could be me arriving here, and I would expect my fellow Marines to treat my family the same way I would treat yours."⁵⁸

LCpl Chris Trusler from the Bethesda Marine Liaison Office met the Dunhams at Fisher House, a lodging facility for families visiting Bethesda, at 2100 on 21 April and escorted them to the waiting room in the Intensive Care Unit (ICU) to await Cpl Dunham's arrival.

Corporal Dunham's Last Hours

LtCol Jim Byrne, Officer in Charge (OIC) of the Marine Liaison Office, drove to Andrews Air Force Base to meet Cpl Dunham's aircraft. He greeted Cpl Dunham, speaking to him as he was loaded into an ambulance for the trip to Bethesda.⁵⁹

Cpl Dunham was transferred to the ICU where his parents were able to see him. They stayed with him until midnight when they walked back to Fisher House. Bethesda's Command Master Chief Jim Piner and his wife Sarah walked from their quarters to Fisher House to spend time with the Dunhams.

At 0730 on 22 April, Cpl Dunham's doctors consulted. Cpl Dunham showed signs of massive brain damage and his brain swelling was becoming severe. They scheduled surgery for 1000.⁶⁰ Around 0800, the Dunhams were asked to come to the hospital to speak with the doctors. At 0900, LtCol Byrne walked the Dunhams into ICU. Cpl Dunham's doctors advised Mr. and Mrs. Dunham that Cpl Dunham's prognosis was dire. They were told that the "Chances for a full neurological recovery are nonexistent." The doctors then mentioned taking Cpl Dunham off of life support.⁶¹

The Dunhams consulted Cpl Dunham's living will. It directed withholding life support in the event of a coma without a reasonable chance of recovery. They went back to his bedside and sat across from each other and considered their decision. When they got up to take a walk and gather their thoughts, a Marine from Bethesda's Marine Liaison took their place at Cpl Dunham's side and held his hand.

The Dunhams walked the grounds of Bethesda for an hour. They reached their decision and then went to see the Piners. Master Chief Piner drove them back to the ICU where LtCol Byrne was at Cpl Dunham's side, holding his hand. LtCol Byrne asked the Dunhams whether they wanted Cpl Dunham to immediately receive his Purple Heart. Deb Dunham told him, "I want him to have it now. He deserves it."⁶²

LtCol Byrne called the Office of the Commandant to inform General Hagee about the Dunham's decision to remove Cpl Dunham's life support.

General Hagee met the Dunhams outside of Cpl Dunham's room. The Commandant entered and awarded the Purple Heart to Cpl Dunham. General Hagee consoled the Dunhams and they hugged, after which the Commandant departed.

The Chaplain administered last rites. At 1635, the breathing tube was removed from Cpl Dunham's throat. The Dunhams sat on either side. LtCol Byrne and two of his Marines stood to the side in silence. Cpl Dunham died at 1643 on 22 April 2004.⁶³

The Dunhams returned to New York the next day, Friday, 23 April. There they were met by two Marines in dress blues who drove them to Scio Central School. The Marines stood guard outside the principal's office while the Dunhams informed their children of the death of their brother.

Later, Deb Dunham described her greatest fear was "that her critically injured son would be alone. More than anything else, she did not want her son to be fighting for his life by himself. 'I did not want him to be alone. There was always somebody with him. From a Mother's point of view, I couldn't get to my son, but others were there to do the things that I couldn't do. That made things a lot easier for me. I don't know why, but it did.'"⁶⁴

Deb and Dan Dunham count among the heroes from that day the Navy medical personnel who held their son's hand as he lay mortally wounded in a field hospital.

They believe that act of kindness gave their son the strength to live long enough to make it to Bethesda, where his parents could be with him when he died.⁶⁵

Cpl Dunham was buried on the 1 May 2004. After his funeral, Dan Dunham said “The Marine Corps has really showed us how much this means to them. They’ve been very good to us.”⁶⁶



Figure 14. Kilo Company 3/7

Honors for a Hero

On 11 January 2007, the President of the United States presented the Congressional Medal of Honor to Cpl Dunham’s parents at a White House ceremony. The President said, “He was the guy who signed on for an extra two months so he could stay with his squad. As he explained it, he wanted to make sure that everyone ‘makes it home alive’. Cpl Dunham took that promise seriously and would give his own life to make it good.”⁶⁷

On 2 April 2007, the Secretary of the Navy announced that DDG-109, an Arleigh Burke class guided missile destroyer, will be named the USS *Jason Dunham*. The Secretary of the Navy made the announcement in Cpl Dunham’s home town of Scio, New York.

Jason Dunham, the friendly, kind-hearted, gifted athlete who followed his star in the United States Marine Corps went on to become one of the most courageous, heroic, and admired Marines this great country has ever known. His name will be forever associated

with DDG-109. May those who serve in her always be inspired by the heroic deeds of Jason Dunham, and may all of us strive to be worthy of his sacrifice.⁶⁸

(Donald C. Winters, Secretary of the Navy)

Lasting Legacy

LCpl Miller, now a Cpl, recovered from his injuries. He continually requested to return to a rifle platoon. The company commander would only allow it with permission from his surgeon, physical therapist, the battalion surgeon and his Mom. Cpl Miller gathered his letters. His Mom asked him why he felt he had to go back. "You don't have to," she told him.

"I have to finish something I started the first time," he told her. "I have to go and finish what Dunham started and bring my guys home."⁶⁹ Cpl Miller has described Cpl Dunham as the "Most honorable man I have ever had the privilege of meeting."

Sergeant Major Huff, the Battalion Sergeant Major said that, "His was a selfless act of courage to save his fellow Marines. This generation of Marines is as good as any generation we've ever had in the Marine Corps."⁷⁰ (Figure 14)

Questions for Discussion

1. Cpl Dunham was with his unit for a very short time prior to deploying to Iraq, yet he made an indelible impression as a leader on his squad and on the other Marines in Kilo Company.

- Is there such a thing as a natural leader?
- Can leadership be taught?
- If so, what are the most effective techniques?

2. Cpl Dunham personified a leadership style that emphasized building bonds with Marines, both on and off duty. In Cpl Dunham's case, this was clearly an effective technique.

- Are leadership techniques personality dependent?
- Will they work for anyone?
- If not, what are the best methods for letting Marines discover those techniques that will be most effective for them?

3. Cpl Dunham's physical courage was put to the test and he rose to an enormous challenge, saving the lives of two of his Marines.

- How is courage an essential component of the Marine leader?

4. When the insurgent attacked Cpl Dunham, his squad mates rushed to his defense. When he saw the mortal threat posed by the grenade, he acted to protect them from its lethal effects.

- Is there a greater motivator among Marines than loyalty to each other?
- If so, what do you think it is?

5. Cpl Dunham clearly was an inspirational leader, evidenced by the actions of his Marines after he was killed. As an example, Cpl Miller volunteered to return to Iraq to finish what Cpl Dunham had started.

- What are some of the best ways for the Marine Corps to identify and nurture inspirational leaders?

6. Throughout Cpl Dunham's medical care, from the corpsman who provided battlefield first aid to neurosurgeons in Bethesda, the Navy and Army medical professionals demonstrated leadership and character that certainly frequently occurs, but is not frequently recognized.

- How important is the role of the military medical community's "strategic corporals", beyond their normal practice of medicine?
- Are there things we should be doing to ensure their actions are properly recognized?

7. The Battalion Rear Det OIC had the duty to inform families when their Marine was wounded or injured.

- How do you select a Marine for such a challenging duty?
- How do you prepare him or her?
- Do you think it's more important that the Marine making such notifications is a member of the unit, possessing bonds of loyalty to the injured Marine or be trained specialist better able to navigate the bureaucracy?

8. Cpl Dunham's Mom noted with gratitude that Cpl Dunham was never alone from the time he was wounded until the time of his passing.

- How important do you think such acts of compassion are to the injured Marine?
To other Marines? To his family?

9. SSgt Cress called the television station in Buffalo, New York after seeing a news story about Cpl Dunham and offered his assistance. SSgt Cress put Cpl Dunham's parents in touch with SSgt Cruz at Bethesda. Within an hour of speaking to SSgt Cruz, Cpl Dunham's parents had airplane tickets to Washington, D.C. SSgt Cress' simple act of offering to help was the key to establishing contact between the Dunhams and

Bethesda Marine Liaison. There were similar acts by soldiers, sailors and Marines throughout this narrative.

- How do you encourage such acts of initiative from Marines?
- Are there things we should do to recognize such acts?

10. The Command Master Chief at Bethesda stepped beyond his role as the Hospital Master Chief and extended warmth and love to the families of injured Marines at Bethesda.

- How can we best integrate these unofficial support activities with our formal support activities?

Appendix A: President's Remarks at the White House

THE PRESIDENT: The Medal of Honor is the highest award for valor a President can bestow. The Medal is given for gallantry in the face of an enemy attack that is above and beyond the call of duty. The Medal is part of a cherished American tradition that began in this house with the signature of President Abraham Lincoln.

Since World War II, more than half of those who have been awarded the Medal of Honor have lost their lives in the action that earned it. Corporal Jason Dunham belongs to this select group. On a dusty road in western Iraq, Corporal Dunham gave his own life so that the men under his command might live. This morning it's my privilege to recognize Corporal Dunham's devotion to the Corps and country -- and to present his family with the Medal of Honor.

I appreciate the Dunhams who have joined us, and will soon join me on this platform to receive the honor on behalf of their son: Dan and Deb Dunham; Justin Dunham and Kyle Dunham, brothers; Katie Dunham, sister; and a lot of other family members who have joined us today.

I appreciate the Chaplain for the Navy -- excuse me, for the Marine Corps. I didn't mean to insult you.

I thank Major Trent Gibson -- he was Jason Dunham's commander -- company commander; First Lieutenant Brian Robinson, who was his platoon commander. I welcome all the Marines from "Kilo-3-7" -- thanks for coming, and thanks for serving.



Figure 15. Medal Presentation

Long before he earned our nation's highest Medal Jason Dunham made himself -- made a name for himself among his friends and neighbors. He was born in a small town in upstate New York. He was a normal kind of fellow, he loved sports. He went to Scio Central School, and he starred on the Tiger basketball, soccer, and baseball teams. And by the way, he still holds the record for the highest batting average in a single season at .414. He was popular with his teammates, and that could be a problem for his mom. You see, she never quite knew how many people would be showing up for dinner, whether it be her family, or the entire basketball team.

He grew up with the riches far more important than money: He had a dad who loved to take his boys on a ride with him when he made his rounds on the dairy farm where he worked. His mom was a school teacher. She figured out the best way to improve her son's spelling was to combine his love for sports with her ability to educate. And so she taught him the words from his reading list when they played the basketball game of "horse." He had two brothers and a sister who adored him.

He had a natural gift for leadership, and a compassion that led him to take others under his wing. The Marine Corps took the best of this young man, and made it better. As a Marine, he was taught that honor, courage and commitment are not just words. They're core values for a way of life that elevates service above self. As a Marine, Jason was taught that leaders put the needs of their men before their own. He was taught that while America's founding truths are self-evident, they also need to be defended by good men and women willing to stand up to determined enemies.

As a leader of a rifle squad in Iraq, Corporal Dunham lived by the values he had been taught. He was a guy everybody looked up to. He was a Marine's Marine who led by example. He was the kind of person who would stop patrols to play street soccer with the Iraqi schoolchildren. He was the guy who signed on for an extra two months in Iraq so he could stay with his squad. As he explained it, he wanted to "make sure that everyone makes it home alive." Corporal Dunham took that promise seriously and would give his own life to make it good.

In April 2004, during an attack near Iraq's Syrian border, Corporal Dunham was assaulted by an insurgent who jumped out of a vehicle that was about to be searched. As Corporal Dunham wrestled the man to the ground, the insurgent rolled out a grenade he had been hiding. Corporal Dunham did not hesitate. He jumped on the grenade, using his helmet and body to absorb the blast. Although he survived the initial explosion, he did not survive his wounds. But by his selflessness, Corporal Dunham saved the lives of two of his men, and showed the world what it means to be a Marine.

Deb Dunham calls the Marine Corps her son's second family and she means that literally. Deb describes her son's relationship to his men this way: "Jay was part guardian angel, part big brother, and all Marine." She remembers her son calling from the barracks, and then passing the phone to one of his Marines, saying, "I've got a guy here who just needs to talk to a mom." Now it's the Marines who comfort her. On special days, like Christmas or Mother's Day or her birthday, Deb has learned the day will not pass without one of Jason's fellow Marines calling to check on her.

With this Medal we pay tribute to the courage and leadership of a man who represents the best of young Americans. With this Medal we ask the God who commands us to love our neighbor as ourselves to wrap his arms around the family of Corporal Jason Dunham, a Marine who is not here today because he lived that commandment to the fullest.⁷¹



Figure 16. The Dunham Family with President Bush

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Case Study 9: Duty vs. Values: A Soldier in Haiti September 1994

Case Summary: A soldier acts in concert with his values but disobeys his seniors and is severely punished.

Discussion Topics: Judgment, Justice, Initiative

Target Audience: NCOs, Company Grade Officers

Purpose: Illustrate the potential for disparity between personal values and organizational objectives. Examine the value of Rockwood's actions as they were viewed from the vantage of his immediate chain of command, and those more senior.

Developed by: Professor Stephen Wrage, U.S. Naval Academy

Discussion Leader Notes:

Table of Contents

Introduction	193
An Unusual Soldier	194
Background: Haiti	195
Force Protection	196
Rockwood's Odyssey	197
The Inspection	199
The Arrest	201
The Trial	203
The Prosecution's Case	204
The Defense	206
Closing Arguments	209
A Note on Outcomes	209
Questions for Discussion	211
End Notes	213

Introduction

Port-au-Prince, Haiti

Barracks Compound, Tenth Mountain Division

30 September 1994

1920 hours

Captain (CPT) Lawrence Rockwood, counterintelligence officer¹ with the U.S. Army's 10th Mountain Division, crouched by his pallet on the concrete barracks floor and thought back through what had happened over the past seven days.

Six days ago, on his second day in-country, a report from the Belair jail in Port-au-Prince described a mutilated Haitian torture victim who escaped. A report two days later traced a beheaded corpse found in a swamp outside the city back to the Omega jail. All the reports detailed the same thing: emaciated and abused prisoners. Most of them were not criminals; rather, they were enemies of the regime that the Americans were there to replace.²

A report he had received two days earlier (28 September 1994) said that American forces had entered a prison in the southwestern town of Les Cayes. They found "over thirty men were crammed into a cell no larger than fifteen feet square. They were so malnourished that – as with concentration camp victims of World War II – their food intake had to be increased gradually to avoid harming them. When the American soldiers removed one invalid from the prison, they discovered that he had lain for so long in one position that some of his skin had fallen off."³

"At least we could get food into those places," Rockwood thought. He had seen the pallet-loads of MRE's – Meals Ready to Eat – unloaded from American ships onto the docks in Port-au-Prince. He had even told one prison official he could probably get two per day delivered for each of his prisoners. The official was against it: too great a security risk, he said. "What's the risk?" Rockwood had asked him. "It's the starving prisoners who will riot, isn't it?" No, he was told. The starving ones just lie there. The security risk would come from outside the prison: from all the people who would break in to get at that food.⁴

An Unusual Soldier

CPT Rockwood had arrived in Haiti on 23 September 1994, four days after the first American troops were deployed to the island as part of Operation UPHOLD DEMOCRACY. He had prepared for this mission with eager anticipation. Rescuing the helpless and opposing the tyrannical is precisely what a military is for, he thought. Rockwood was the son, grandson, and great-grandson of military men, but he didn't fit any traditional mold. He had grown up on military bases – both his parents served in the Air Force – having lived in Turkey, France, and Germany by the time he entered high school. The event he remembered best from his childhood occurred while his family was stationed in Germany.

Years before, his father had been among the forces that had liberated Nazi camps during WWII. He wanted his son to know what he had seen and learned, so when Rockwood was eight years old, he and his father went together to the concentration camp at Dachau. "My father told me that these camps are not the creation of a few evil, brutal men. They're really the creation of cynicism and blind obedience to authority."⁵

Rockwood considered breaking the pattern of three generations by joining the priesthood instead of the military, however, after a year in a Catholic seminary, he followed suit and enlisted in the Army at age nineteen. Along with his commission, he would later earn a bachelor's degree in psychology, a master's in history, and become a licensed practical nurse.

In his cubicle back at Fort Drum, Rockwood kept the pictures of three men he admired: General George Picard, a French army officer during the Dreyfus Affair who went to prison to support Dreyfus' innocence,⁶ Colonel Count von Stauffenberg of the German army, who gave his life in an attempt to assassinate Hitler, and Chief Warrant Officer Hugh C. Thompson, the helicopter pilot who saw the My Lai massacre in progress and took action to stop it.

Well before he left for Haiti, Rockwood had been concerned about human rights abuses occurring there and had taken steps to educate himself on the situation. He focused on Haiti's prisons, the most likely sites for torture, murder, and abuse. On 10 August 1994, he requested a classified report from the Central Intelligence Agency (CIA)

about Haitian prisons. He also noted that the Civil-Military Operations Handbook for the 10th Mountain Division includes a checklist enumerating the information that division staff should obtain about prisons, including the "name, address, grid coordinates, telephone number, type of facility, maximum capacity, present capacity, number of guards, capacity of kitchens, name of warden, overall condition of facility and inmates."⁷ Rockwood was hopeful his research coupled with the guidelines addressed in the handbook would help prepare him for the problems he expected to encounter.

On 15 September, Rockwood's commitment to protecting human rights in Haiti was reaffirmed when he heard President Clinton emphasize that a primary objective of Operation UPHOLD DEMOCRACY was "to stop the brutal atrocities."⁸ Rockwood's unit deployed to Haiti on 19 September, and he arrived in country four days later.

Background: Haiti

In September 1991, General Raoul Cedras overthrew the only democratically elected government in Haiti's history when he drove Jean-Bertrand Aristide into exile seven months into his term.⁹ In October 1993, a noisy crowd encouraged by Cedras blocked the docks in Port-au-Prince when the USS *Harlan County* arrived. Rather than face the prospect of violence, the Clinton administration pulled back the *Harlan County*. The week before, eighteen American soldiers were killed by Mohammed Aideed's gunmen in Mogadishu. American enthusiasm for nation-building was at a low point, and the *Harlan County* returned to the United States.

By the spring of 1994, however, the Clinton Administration was facing strong pressure to act: the Congressional Black Caucus had publicized torture and murder in Haiti; Randall Robinson of Trans-Africa had begun a hunger strike in recognition of the victims of Cedras' regime; Clinton's chief advisor on Haiti had resigned and been replaced with a former head of the Black Caucus; midterm elections were six months away; and desperate Haitian refugees were appearing on the beaches of Florida.

Under the weight of these pressures, President Clinton deployed the 24th Marine Expeditionary Unit (MEU) off the coast of Haiti in July 1994 as a warning. The carriers USS *Eisenhower* and *America* joined the 24th MEU in September, but this initiative lacked results as Cedras continued to hold power and the situation remained

unchanged. On 15 September, President Clinton declared "there is no point in going any further with the present policy."¹⁰ On order, elements of the 82d Airborne Division boarded their planes at Fort Bragg, North Carolina.

The paratroopers were already in the air when an emergency mission led by former President Jimmy Carter, Senator Sam Nunn, and General Colin Powell persuaded Cedras and his top circle to leave Haiti. American troops led a multinational force into the country unopposed, but they entered into a strange setting. Aristide was not scheduled to return to Haiti for another month; until then, governance was to be shared by the American-led, United Nations (UN)-sponsored forces, and the remnants of the Cedras regime, which had proven to be corrupt, brutal, and murderous. The prisons remained under local control.

Force Protection

It was after midnight when Major (MAJ) Spencer Lane, USA, the U.S. military attaché in Port-au-Prince, arrived. MAJ Lane persuaded Rockwood to un-chamber the round in his rifle and to accompany him back to the barracks compound. The next day CPT Rockwood was flown back to Fort Drum, New York.

"As I assumed my duties in Haiti on 23 September I was informed that 'force protection' was to be the focus of our efforts," Rockwood later reported.¹¹ While this seemed of no consequence to many on the mission it troubled Rockwood and a number of others. Assuring "force protection," avoiding "combatant status," and resisting "mission creep" were the lessons learned from the previous October's disaster in Somalia. Joint Task Force Commander Lieutenant General (LTG) David C. Meade and his staff officers were determined that American troops in Haiti would not cross "the Mogadishu Line."¹²

When troops landed on 19 September 1994, their rules of engagement (ROE) did not allow them to engage thugs from the Cedras regime who were beating Aristide supporters gathering at the port to hail the Americans' arrival. According to the ROE, Americans were to use force only when they themselves were threatened with violence; they were not to intervene to prevent Haitian-on-Haitian violence.

American troops were forbidden to leave the barracks compounds unaccompanied. They could travel only in convoys of at least two vehicles carrying at least two soldiers each. American soldiers were to stay behind barbed wire and sand bag emplacements, separating them from the population.

LTG Meade's numerically superior multinational force of 20,000 troops plus equipment¹³ confronted frequent challenges to its authority. Besides facing "anti-thugs" who beat pro-democracy demonstrators, the force was beset by unruly crowds on several occasions. Most of these confrontations did not develop into open violence, and those that did were relatively limited; one American soldier was shot by a Haitian he had arrested, another incident involved a patrol of Marines who were fired upon in Cap-Haitian, in response they returned fire resulting in the deaths of ten Haitians.

Rockwood's Odyssey

CPT Rockwood was convinced that Haitians, not Americans, were in the greatest danger. "The main content of the reports that reached me centered on human rights violations against Haitian slum residents rather than any threats directed against our forces," he later said.¹⁴ As soon as he arrived, Rockwood embarked on what he called "my week long odyssey... to awaken interest of the commander and staff of the Multinational Forces in human rights violations."¹⁵

Arriving the evening of 24 September, CPT Rockwood attempted to reach Lieutenant Colonel (LTC) Karl Warner, chief legal officer of the 10th Mountain Division and the person responsible for monitoring human rights violations. Unfortunately LTC Warner was out. CPT Rockwood left a message requesting authorization to investigate reports of human rights violations at the National Penitentiary in Port-au-Prince. CPT Rockwood's letter was never addressed.

The next morning CPT Rockwood met with the command's chaplain to speak about the deteriorating human rights situation in the slums and prisons of Port-au-Prince. CPT Rockwood found the chaplain unwilling to become involved in what he termed a "political" problem.¹⁶ CPT Rockwood remonstrated with him and later made a formal complaint regarding the chaplain's attitude in a letter to the head of the Chaplaincy Corps.

That same day, 25 September, CPT Rockwood went to the Staff Judge Advocate's office and requested the Law of War manual, the 1977 Protocol to the Geneva Convention, and the report on the UN High Commission for Human Rights Conference held in Vienna in 1993. He was determined to prove the Joint Task Force (JTF) was obliged under international law to protect human rights in Haiti. He was disappointed to find the only available reading material was an Army field manual compiled in 1954.

CPT Rockwood's sense of urgency grew when he received the report from Belair jail. Late in the day he took the report to his commanding officer, LTC Frank Bragg, who Rockwood regarded as a mentor. Bragg was sympathetic, but said prison inspections were an unrealistic goal, and reiterated the position that the primary goal was the protection of U.S. forces, not Haitian civilians.¹⁷

CPT Rockwood returned the next evening, 26 September, to the Staff Judge Advocate's office to protest the lack of action on human rights violations. CPT Rockwood's desperation grew as he was convinced the Cedras regime was using its last few days in control of the prisons to eliminate its enemies, primarily political opponents and witnesses to crimes of torture and murder.

On 27 September, CPT Rockwood called the Civil-Military Operations Center hoping to spur a survey of the penitentiaries. He was told the operations center was not collecting current information on the prisons because the JTF did not have the jurisdiction. CPT Rockwood offered the reports he had received on the Belair and Omega jails. That evening he attempted to organize an intelligence team to visit several prisons, but was told he would need a military police escort. The military police refused, saying their orders were to monitor Haitian police stations and police patrols, but not prisons.

CPT Rockwood argued to anyone who would listen that a primary principle of intelligence work is to protect human sources, and warned that the people he talked to during the day were disappearing—apparently being arrested or killed overnight. He needed to go to the prisons to see if they were there, and to see if they were alive. CPT Rockwood was told to be patient; it would be some time before troops could be spared for such missions. On the morning of the 29 September, a liaison officer from Special

Operations Forces called on CPT Rockwood to inform him his unit was to take no destabilizing action and, specifically, that they were not to inspect a prison without full military support.

Convinced innocent people were dying and feeling responsible for their fate, CPT Rockwood took action. Late on 29 September, he lodged a complaint with the Inspector General (IG) alleging that the JTF command was failing to protect the human rights of people in its area of responsibility. He named eight officers in his chain of command and charged that they had subverted President Clinton's primary mission intent concerning human rights as announced in the 15 September address to the nation. Under "Action Requested" CPT Rockwood wrote, "Inform the commanding general as soon as possible of facts that may lend the appearance that the Joint Task Force is indifferent to probably ongoing human rights violations in the [Port-au-Prince] penitentiary."¹⁸ The IG discouraged CPT Rockwood from approaching the command's chief of staff on this matter, but he also told CPT Rockwood his complaint would not be brought to the attention of LTG Meade for at least a week.

CPT Rockwood did not go to the chief of staff. That evening he again confronted his commanding officer, LTC. Frank B. Bragg, detailing his concerns. He reportedly compared LTG to General Yamashita, the commander of Japanese forces in the Philippines in 1945.¹⁹ Yamashita was sentenced to death by a war crimes tribunal for his failure to protect American prisoners, even though he neither ordered nor knew of their execution by his soldiers. LTG Meade, CPT Rockwood argued, had direct and specific knowledge of human rights abuses in the Haitian penitentiaries, and was doing nothing to stop them. Unfortunately for CPT Rockwood, LTC Bragg had no sympathy with these arguments.

The Inspection

On the night of 30 September 1994, CPT Rockwood, a counterintelligence officer with the U.S. Army's 10th Mountain Division, chose to disobey orders and carry out an independent, unauthorized, one-man inspection of the Haitian National Penitentiary. CPT Rockwood later explained himself at his own court martial, "After a few hours sleep, much thought, prayer, and meditation, I decided to take further action in order to avoid

the continued inexcusable loss of human life, even though it would mean the end of a fifteen-year military career and a possible court action.”²⁰

Though he was due to report for duty at 2000 hours on the night shift at the Multinational Force Headquarters, Joint Operational Support Element, Rockwood made up his mind to go absent without leave. He did no more to inform his chain of command than to leave a note which read, “I am doing something that is clearly legal to stop something that is plainly illegal. Action required: All means necessary to implement the intent of the UN and U.S. President, intent on human rights.” He pinned a small shoulder patch of an American flag to the note and wrote above it, “Take this flag. It is soiled in unnecessary blood. You cowards can court martial my dead body.”²¹

CPT Rockwood dressed in battle dress utilities, put on a flak jacket and helmet, strapped on a first aid kit and full ammunition pouch, added two canteens and grabbed his rifle. He made his way to the rim of the cantonment. If he had tried to exit by the main gate, he would have had to explain himself to the sentries, or lie. Instead, he scrambled unobserved over the wall of the barracks compound, dropped to the ground in a Haitian slum. The time was around 1920.

With the help of a seven year old boy who spoke a good deal of english, CPT Rockwood managed to negotiate a deal with a Haitian truck driver who, for forty dollars, agreed to drive CPT Rockwood into the center of Port au Prince. He also paid two other men ten dollars each to ride along. His ride dropped him in front of the Presidential Palace, a few blocks from the National Penitentiary. CPT Rockwood had little idea where he was. He began to walk the streets of the city as night fell, a lone American soldier dressed in full battle gear, toting his rifle.

He spent over an hour looking for the prison, attracting the attention of Haitian policemen and soldiers and being followed at times by numbers of curious, possibly hostile persons. Finally at around 2030 he saw a gate with the sign, *Penitencier National*. “I entered by literally putting my boot in the door.”²²

Inside the prison, CPT Rockwood quickly found himself in the company of eight armed Haitians. He had chambered a round in his rifle as he entered the gate; now he falsely announced he was the lead man in a team coming to inspect the prison. As it happened, the night warden, Haitian Major Serge Justafor, was a graduate of the U.S.

200

Army's School of the Americas and spoke fluent English. He let CPT Rockwood into his office, but claimed to be unable to unlock the main prison block. "I'm not responsible for what they do to each other once I lock them in at night," he said.

Justafor showed CPT Rockwood a number of newly arrived prisoners who were in good physical condition, but when CPT Rockwood demanded access to other parts of the prison, Justafor put him off repeatedly. Finally CPT Rockwood set out on his own, wandering across a courtyard and down a dark passage. There he found what Justafor called the prison "infirmary." It was a filthy, reeking chamber jammed with twenty-six people, most of them lying on the bare, wet concrete floor. To CPT Rockwood, who held a degree in nursing, they appeared to be suffering from a number of wasting diseases such as tuberculosis, AIDS, and acute dysentery. Some were amputees. Few had even a scrap of cardboard to lie on. Many were near death. A trench along the wall was full of feces, urine, and flies.

CPT Rockwood returned to the warden's office and demanded to see a list of the prisoners. "My intent was to secure an inventory so that we could return in two weeks and ask what had become of each individual."²³ CPT Rockwood was told no such list existed; later he was told it could not be produced until morning. When he again demanded entry to the main cell block, he was told there could be no entry until morning.²⁴

Faced with locked doors and scowling faces, CPT Rockwood found himself stymied. He later said he thought he had accomplished his mission.²⁵ He was confident that he would be arrested by JTF authorities, and his arrest would bring official attention to this prison. The JTF would have to take responsibility for the National Penitentiary, he assumed; the evidence they would find would force them to investigate the rest of Haiti's prisons and jails. To set these events in motion, he asked Justafor to inform the U.S. authorities of his presence there, then pulled up a chair in the prison courtyard and waited.

The Arrest

It took about four hours for Justafor to contact American authorities, in part because the Haitian telephone system didn't work. It was after midnight before MAJ

Spencer Lane, Chief Military Liaison Officer at the U.S. Embassy in Port-au-Prince, arrived at the penitentiary. He summoned a squad of MP's to join him there as he expected to have to overpower CPT Rockwood,²⁶ but CPT Rockwood went with him willingly. When given a direct order to do so, he unchambered the round still in his rifle and quietly followed MAJ Lane out of the prison.²⁷

On the way to the JTF cantonment, Lane upbraided CPT Rockwood sharply. "What's the matter with you?" he demanded. "Don't you know there are hell-holes like this one in countries all around the world? What makes this one any different from all of those?" "This one is under the authority of the United States Army," CPT Rockwood replied.²⁸

At Camp Democracy, the JTF cantonment, CPT Rockwood was read his legal rights and told he was under arrest. He was also given a three-hour psychiatric exam. The doctor, MAJ Dean K. Inouye, found him excited but normal and recommended CPT Rockwood's release from the infirmary. CPT Rockwood stayed the rest of the night in the military hospital. The next day he waited eight hours for his superiors to approve the psychiatrist's recommendation for discharge from the infirmary, then finally disobeyed the doctor's orders, left the facility, and sought out his commanding officer, LTC Frank Bragg.

LTC Bragg, director of intelligence for the JTF, had been a sympathetic but stern mentor to CPT Rockwood. CPT Rockwood approached him in an excited state and began reporting his findings at the prison. Bragg cut off CPT Rockwood's report and told him he was sending him back to the 10th Mountain Division's headquarters at Fort Drum, New York. Becoming more agitated, CPT Rockwood insisted on describing the prison and accused Bragg of criminal negligence under international law for failing to send a unit to inspect the site. LTC Bragg told CPT Rockwood to be quiet and warned him that his behavior was unacceptable for an officer. CPT Rockwood then repeatedly shouted, "I don't just follow orders. I am not a Nazi officer, I am an American officer."²⁹

Bragg told CPT Rockwood to stop shouting, but Rockwood disobeyed, insisting that he alone was fulfilling the president's command intent. "My loyalty is to the Constitution, then to the Commander in Chief, not to the careers of my immediate superiors," he declared. "I looked around me," he recalled later,³⁰ "And I did not see

202

anyone who outranked the president.” The next day CPT Rockwood was put on a plane to Fort Drum.

The Trial

Even at this point, a court martial was not inevitable. CPT Rockwood was offered a chance to resign with the understanding that if he went quietly, there would be no punishment.³¹ Instead, CPT Rockwood insisted on a court martial, even though he was advised he risked a near certain conviction. The military judge warned him a conviction could mean as long as ten years in jail.³²

Years after his trial, CPT Rockwood still seemed surprised the Army courts ruled against him on a clear case of disobeying orders.³³ He seemed convinced that in subsequent appeals he would be exonerated and the principle of humanitarian obligation under international law would be vindicated.

“I wanted the Army to have to deal with this out in the open. If I went away, the issue of whether or not the Army command was criminally negligent under international law for not going into the prison would also go away. I wanted the Army to take an unequivocal stand on human rights by supporting me.”³⁴

Subsequent events showed CPT Rockwood had been planning on taking the issue to trial almost from the time of his arrest. On the way from the plane to Fort Drum two days after his arrest, CPT Rockwood asked to make a phone call. His escorts needed convincing, so he told them he wanted to contact his wife to be sure she was receiving his pay. When they consented, he instead dialed directory assistance for Washington, D.C. and asked for the number for Amnesty International. To Amnesty International he quickly told his story and requested they find him a good lawyer. Amnesty International enlisted the help Ramsey Clark, U.S. Attorney General under President Johnson.

The court martial was convened in May 1995, more than six months after the events in Haiti. The convening authority was LTG David C. Meade, the JTF Commander in Haiti whom CPT Rockwood had named in a complaint to the IG and whom Rockwood had compared to General Yamashita for his indifference to human rights abuses.³⁵ The

five jurors, three majors and two colonels, included four officers who had served under LTG Meade; two were friends of LTC Bragg.³⁶

LTG Meade had himself been subject to a trial of sorts' just days before. On 26 April 1995, Representative Dan Burton, (R-IN), Chair of the Subcommittee on the Western Hemisphere of the House Committee on International Relations, wrote to Secretary of Defense William J. Perry to demand "Why did Captain Rockwood's superiors ignore his repeated and strenuous efforts to get them to investigate the prison?" On 3 May, Representative Burton convened a hearing to look into human rights violations at the Port-au-Prince penitentiary and invited CPT Rockwood to testify. Representative Burton had visited the prison himself in February and was horrified at what he saw. His hearing dramatized his dissatisfaction with the Army's performance on human rights issues in Haiti.³⁷

CPT Rockwood had welcomed the publicity generated by the Burton hearings and had done whatever he could to court media coverage, supplying a number of statements to the press, speaking to students at St. Lawrence University, and benefiting from the efforts of a journalist, Anna Husarska, staff writer for *The New Yorker*, who essentially became a spokesperson and press agent for him. CPT Rockwood was profiled in February on "Dateline," a television news magazine, and was the subject of dozens of largely sympathetic news stories in newspapers and magazines as diverse as *The Independent* of London, *The New York Times*, *The Village Voice* and *The New Republic*. (The prosecution had sought a "gag order" to prevent this sort of publicity campaign, and then withdrew the application during oral argument.)

The Prosecution's Case

The prosecution was led by CPT Charles N. Pede, Chief, Criminal Law Division, Office of the Staff Judge Advocate, 10th Mountain Division. CPT Pede and his team brought five charges against CPT Rockwood: failure to go to his appointed place of duty (the failure to report for the night shift at 2000 in the JTF Headquarters); leaving his appointed place of duty (leaving the room in the medical clinic where he had been told by the psychiatrist to wait until released); disrespect to a superior commissioned officer

(shouting at LTC Bragg); willfully disobeying a superior commissioned officer (refusing to be quiet when told to by LTC Bragg); and conduct unbecoming an officer.

The first four charges were well substantiated by multiple witnesses. The last charge, however, was far more difficult to prove, as it involved matters of judgment regarding an officer's proper conduct. It promised to offer opportunities for the defense to introduce a wider range of evidence and witnesses, perhaps even to raise questions about the priorities that guided the entire mission to Haiti.

At the opening of the trial, CPT Pede moved to dismiss the fifth charge. The trial judge, LTC Robert D. Newberry, cautioned Pede that the charge could be dropped but that all the witnesses who had been summoned to speak to that charge would still be heard if the defense chose to call them. The prosecution reconsidered and withdrew its motion.³⁸

CPT Pede framed the issues forcefully in a brief, direct opening statement. "[T]his is an exceptionally simple case of flagrant disobedience of orders, defiance of authority and contempt for good order and discipline by this officer. The accused is a misdirected and dangerous officer who decided, on his own, that he could determine the President's intent and implement it by his own means. In doing so, he thumbed his nose at the very fabric of an Army in a deployed setting, thumbed his nose at good order and discipline, lawful orders, and endangered himself in the process."³⁹

CPT Pede then presented a curt and severe account of CPT Rockwood's actions on the night of 30 September 1994, concluding,

He disobeyed orders, was derelict in his duties, was absent from an important place of duty, an important operation at an important time. He went to a prison, endangering himself and others, and MAJ Lane, and the operation by creating an unstable incident at the time he was in the prison... There is no defense, no justification or excuse for this behavior. We are confident that at the conclusion of the evidence that you will reach the result of guilty as to all charges.⁴⁰

The Defense

Ramsey Clark opened for the defense with a reflection.

Members of the panel, it's an interesting fact that 50 years ago today American GI's were moving rapidly across Germany. And there they were discovering and finding Nazi concentration camps, Dachau and Buchenwald, and names we'll never forget. And they discovered horrors there that have haunted humanity ever since. Those pictures are etched, certainly in mine, and I believe in [the] tribal memory of our species, forever. Interesting thing about nature is if you hang around long enough, you're finally the oldest one in the room. And considering the alternative, it's not the worst, I guess. And I'm always amazed at how old I've gotten.⁴¹

The former Attorney General continued in this vein for just under an hour. He said little to contest the charges directly; rather, he attempted to cast an entirely different light on the case by setting it in a different historical context. He evoked the memory of American troops liberating Europe and depicted the mission to Haiti as its recent counterpart, then asked the jurors to "imagine if there had been an order, 'Don't go to those camps. Stay at your base.'"

Clark portrayed CPT Rockwood as a hero, the figure in the case who acted to save lives in peril, the only officer in Haiti who acted responsibly, justly and admirably. Using the conduct unbecoming charge as his point of departure, Clark claimed CPT Rockwood was the only figure in the case that showed an officer-like respect for the laws of war, the Nuremberg Principles, and the instructions printed in the 10th Mountain Division's own Civil-Military Operations Handbook.⁴² Clark, at least implicitly, indicted LTG Meade and all his staff (including a number of participants in the court martial proceedings) for their failure to respond to the demands of international humanitarian law. His aim seemed to be to put Meade on the defense and he attempted to summon the general to appear and be questioned as a witness. This request was denied.⁴³

The defense also held that CPT Rockwood was the only officer who acted to uphold the president's expressed command intent, quoting passages from President

Clinton's address to the nation of 15 September 1994. In that emotional address the president described

...a horrible intimidation campaign of rape, torture and mutilation. People starved; children died; thousands of Haitians fled their country, heading to the United States across dangerous seas... Recent reports have documented the slaying of Haitian orphans by deadly police thugs... Children forced to watch as their mothers' faces are slashed with machetes... We must stop the brutal atrocities that threaten tens of thousands of Haitians...⁴⁴

The prosecution was able to point out, however, that on 19 September, as the intervention began, the President spoke at a televised press conference in a very different tone. "My first concern," he said, "and the most important one, obviously, is for the safety and security of our troops. General Shalikashvili and LTG Hugh Shelton, our commander in Haiti, have made it clear to all involved that the protection of American lives is our first order of business."⁴⁵ They recalled Clinton's words on 19 September as a strong assertion of force protection as the first priority for the JTF, and offered them as justification for punishing CPT Rockwood for putting himself and others potentially at risk.

Twenty-four witnesses were heard in roughly equal numbers from each side. Prosecution witnesses established, beyond reasonable doubt, that the first four charges had strong basis in fact. Defense witnesses developed the notion that CPT Rockwood acted under duress in the sense that he believed if he had not acted at once, helpless people would die.

CPT Rockwood took the stand and spoke very appreciatively of the Army and respectfully of LTC Bragg whom he called "among the best and the most supportive" of commanding officers. When CPT Pede asked him why he had disregarded his chain of command, CPT Rockwood said, "I was compelled to do what I did because of the moral and physical cowardice of the chain of command. Lawyers aren't executed at war criminal trials. Soldiers are."⁴⁶

When CPT Pede recalled the strongly worded note CPT Rockwood had left on his cot, CPT Rockwood conceded, “I have a tendency toward melodrama. I need to work on that.”⁴⁷ The prosecution team pointed out that CPT Rockwood had been under medication for depression at the time he was in Haiti. The defense cited the reports of two psychiatrists who examined CPT Rockwood on the night of and the day after the events for which he was charged, and who found him excited but sane.⁴⁸

In an attempt to answer the prosecution’s “good order and discipline” argument, the defense brought to the stand former Chief Warrant Officer (CWO) Hugh Thompson, the helicopter pilot who saw the My Lai massacre in progress and ordered his door gunner to fire on American troops if they continued the slaughter. The defense team held that CWO Thompson clearly had acted outside the usual bounds of “good order and discipline,” yet he had eventually been decorated for doing so. Thompson argued that CPT Rockwood could have been court-martialed for *not* doing all he could have to help the prisoners. “A soldier has a moral obligation,” he said.⁴⁹

One witness whom the prosecution proposed to call declined to testify. Brigadier General (BG) Richard W. Potter, USA, commander of Special Forces in Haiti, did not want to appear against CPT Rockwood. Potter had instructed his men to go into the prisons and jails, to empty them of people who had not been charged or tried, and to clean them up. “Under Potter’s command, Captain Rockwood would have been performing his duty. Under Meade’s command Rockwood was a criminal.”⁵⁰

The issue of humanitarian law was reduced to a dispute over a single term. The expert witness chosen by the defense, Dr. Francis Boyle, a Professor of International Law at the University of Illinois, argued that the intervention in Haiti amounted to an “invasion,” and that the Joint Task Force, as an invading power, had a legal obligation to keep order in the lands it occupied.⁵¹

Dr. William H. Parks, the prosecution’s expert witness, would grant, at most, that there was an “intervasion,” something more than an intervention but less than an invasion, and since there never was a declaration of war on Haiti, neither the Geneva Convention nor the Nuremberg principles applied.⁵²

Closing Arguments

Closing arguments were brief. CPT Pede went first, saying “the accused was an unreasonable person who thinks he knows everything and acts on it.” He said CPT Rockwood’s decision to act on his own for the entire United States Army was “pretty heady stuff for a captain on Prozac.” “We must make an example of him,” CPT Pede concluded. “Soldiers in the field must follow orders.”⁵³

Ramsey Clark had the last word and used it to remind the jury, “You know what was going on in those prisons. Starvation. Neglect. Disease. You know people were dying in them. The hottest places in hell are reserved for those who, in times of moral crisis, do nothing.”⁵⁴

A Note on Outcomes

CPT Rockwood faced dismissal from the Army, possible large fines, and up to six years in prison. The jury of five officers deliberated for less than two hours, then voted unanimously to convict CPT Lawrence Rockwood on the first three counts of the indictment (failure to go to his appointed place of duty, leaving his appointed place of duty, disrespect to a superior commissioned officer and willfully disobeying a superior commissioned officer.) They acquitted him on the fourth charge (failure to obey a lawful order and dereliction of duty.) On the fifth count, conduct unbecoming an officer, there was some disagreement, but Rockwood was convicted on that charge as well. His sentence was dismissal from the military, loss of retirement and other benefits, and a forfeiture of all pay.

He appealed these findings at a number of levels. At each level the findings of the original court were substantially upheld though the conviction on the last count was softened and the forfeiture of pay was reduced to a fine of two months’ pay or \$3000.⁵⁵ Rockwood pursued all possible appeals until the last was exhausted in October 1999.

LTG David C. Meade did not remain in his position long enough to sign Rockwood’s court martial papers. He was given an early and unscheduled retirement in July 1995, six weeks after the conclusion of the trial. LTG Meade has asserted in interviews with the author of this case that his retirement was not related in any way to the Rockwood case; but every other officer with close knowledge of the case who was

consulted on the question has expressed the opinion that his retirement was not voluntary, that his performance in Haiti was the cause of the early retirement, and that the Rockwood case was an important element in the unfavorable assessment that his performance in Haiti received.

LTG Meade's successor in Haiti, 25th Division Deputy Commander, General James Hill, made a practice of taking reporters on tours of the prisons and claimed that he personally had seen the inside of every prison in Haiti and had created a prisoner registration system, and had performed sanitation works for many prisons.

In February 1996 the commander of U.S. forces in Bosnia blocked the inspection of a prison in Tuzla where Bosnians were reported to be holding Serbian prisoners of war in violation of the Dayton Accords. This time no Rockwood defied his orders, though members of U.S. forces in Tuzla protested that the prison ought to be inspected and the Rockwood case was cited. The Red Cross later inspected the prison and found eighty-eight POWs had in fact been secretly and illegally held and abused by their captors.

Questions for Discussion

1. The President's stated reason for entering Haiti was, according to the defense, to protect human rights. In this sense, CPT Rockwood was obeying orders—he was attempting to carry out the President's command intent. However, the prosecution was quick to point out that President Clinton had later said that operational security was top priority; firefights were still taking place, and at least one American had been killed.

- The larger, over-arching goal of the invasion was the protection of human rights. Should broad social and political goals take precedence over practical realities on the ground?
- What was the "commander's intent" regarding the invasion of Haiti? Was the prosecution right?

2. The prosecution characterized Rockwood as acting in the interest of the U.S. Army by himself. Should junior officers concern themselves with following the broad guidelines established by civilian leadership, or should they focus on the intent of their immediate superiors?

3. Article 10 of the 1977 Protocol to the Geneva Convention states "All the wounded, sick and shipwrecked, to whichever Party they belong, shall be respected and protected" and "In all circumstances they shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required"

- CPT Rockwood was charged with disobeying orders. However, if soldiers are issued an *illegal* order, then they are within their right to disobey. Given that the Geneva Convention clearly states that sick and wounded are to be attended to, were orders to ignore them legal?
- CPT Rockwood was told several times, by several people, not to conduct searches of the prisons. These included his commanding officer, a chaplain, the inspector general, and even a special forces liaison. Did all of these people issue him unlawful orders?
- Article 10 of the 1977 Protocol states that sick or wounded should receive help

“to the fullest extent practicable...with the least possible delay.” What if it is just not practical to provide aid? Does that provide legal justification for operational security?

End Notes

1. As a counterintelligence officer, CPT Rockwood's duties were to read intelligence reports and debrief intelligence operatives, both American and Haitian, to discover potential threats to U.S. forces in Haiti. In this role he had unusual access to information, freedom of movement, contact with Haitians, and opportunity to exercise initiative.
2. A Central Intelligence Agency report that Rockwood had requested before he set out for Haiti said "85% of the 300 to 500 people incarcerated [in the National Penitentiary in Port-au-Prince] have not been charged" with a crime. The report found they were political prisoners of the Cedras regime, supporters of the democratically elected Aristide government that the intervention was intended to restore to power. See Meg Laughlin, "The Rockwood Files," *Miami Herald*, 1 October 1995, Tropic section, 6.
3. The prison had been visited by Special Forces operating independently in the countryside under the command of Lieutenant Colonel Michael Jones. In an interview with Bob Shacochis, author of *The Immaculate Invasion* (New York: Viking, 1999) Jones says, "We found some photographs, pretty damning photographs. People being pulled apart with chains, people being beaten." (Shacochis, p. 150) Jones later recalled "a pile of live bodies crammed into a cell in which there was neither room to stand nor room to lie down. When soldiers, who apparently did not realize initially that the men were still alive, began pulling one of the men off the pile, his skin simply ripped off his back, exposing his spinal cord to view." Quoted in transcript of U.S. v. Rockwood, no. 261-29-6597 at 1604-5. See also Ian Katz, "Depressed or Just Decent," *The Guardian*, (London) 30 May 1995, at T-4 and Peter Slevin, "36 Inmates, One Cell: Haitian Jails in Squalor," *Miami Herald*, 10 October 1994, at 1A. The horrible conditions in Les Cayes were not unique. General James T. Hill, deputy commander of the 25th Infantry Division deployed to Haiti in 1996, told reporter Anna Husarska in an unpublished interview, "everybody found it in every one of the jails. There is no doubt about it. I've been to almost every one of the jails." Interview with Husarska dated 2 March 1995. See Robert O. Weiner and Fionnuala Ni Aolain, "Beyond the Laws of War: Peacekeeping in Search of a Legal Framework," *Columbia Human Rights Law Review*, Winter, 1996 at note #21.
4. See testimony of Paul J. Browne, Vice President, The Investigative Group, in United States House of Representatives, 104th Congress, First Session, "Human Rights Violations at the Port-au-Prince Penitentiary, Hearings before the Subcommittee on the Western Hemisphere, Committee on International Relations", 3 May 1995.
5. Quoted in Associated Press, "Count-martial Looms for Officer Who Probed Haiti Rights Abuses," *Asheville Citizen-Times*, Asheville, NC, 3A..
6. "In 1894 Captain Alfred Dreyfus (1859-1935), a French officer, was convicted of treason by court martial, sentenced to life imprisonment, and sent to Devil's Island. The case had arisen with the discovery in the German embassy of a handwritten list of secret French documents. The French army was at the time permeated with anti-Semitism, and suspicion fell on Dreyfus, an Alsatian Jew.... In 1898 it was learned that much of the evidence against Dreyfus had been forged by army intelligence officers." *The Concise Columbia Encyclopedia*, (New York: Columbia University Press, 1983), 242.
7. Civil Military Operations Handbook of the 10th Mountain Division, Entry #9, "Law Enforcement Agency Checklist." See also the *Civil Affairs Operations* manual of the U.S. Army (FM 41-10) at Chapter IX (Public Safety) under heading "c".
8. President Clinton's words: "Our reasons are clear: to stop the horrible atrocities; to affirm our determination that we keep our commitments and we expect others to keep their commitments to us; to avert the flow of thousands more refugees and to secure our borders; to preserve the stability of democracy in our hemisphere." *Foreign Policy Bulletin*, November/December 1994, 18.
9. Haiti is a mountainous country of about 11,000 square miles and 9,000,000 people, almost all of African descent. It trails every country in the western hemisphere in such measures of development as literacy, income per capita, doctors per thousand people and miles of roads. 85% of the population is illiterate; 60% are unemployed or underemployed. Less than 40% of the urban population and less than 5% of the rural population have access to piped water. Infant mortality is over 110 per thousand (compared to 40 per thousand in the United States.) Brian Weinstein, *Haiti: The Failure of Politics*, (New York: Praeger, 1992), 4-5.

Before 1790, Haiti was France's richest colony, accounting for almost half of France's foreign trade and producing 50% of the world's sugar and 40% of the world's coffee. A series of bloody revolutions in the next twenty years and a brutal but inefficient feudal system throughout the 19th century entrenched Haiti in misery. The country was occupied and governed by U.S. troops from 1915-1934. Since then a succession of dictatorships protected the interests of a wealthy, Europeanized elite at the expense of the mass of the population.

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- ¹⁰. See *Foreign Policy Bulletin*, November/December 1994, 18.
- ¹¹. Interview with the author, August 18, 1999. Rockwood was not alone in that assessment. See also the testimony of Lieutenant Colonel Frank Bragg, Assistant Chief of Staff for intelligence, 10th Mountain Division and Director of Intelligence for the Multilateral Force in Haiti: "Question: Would it be fair to say that actually your whole priority was force protection at that time? Answer: It is fair to say that there was no doubt, that was my number one priority and I had every intelligence asset I could muster focused primarily on that one thing." Transcript of U.S. v. Rockwood, no. 261-29-6597 at 1372.
- ¹². On "mission creep," see Adam B. Siegel, "The Intervention of Haiti", Professional Paper 539, August 1996, (Alexandria, VA: Center for Naval Analyses), 27.
- ¹³. Of those 20,000 troops, about half were in logistical, communications, intelligence, or other support roles. The troops of the Joint Task Force were primarily concentrated in Port-au-Prince and housed in a converted industrial park on the edge of the city. Small units of special forces operated independently in the countryside.
- ¹⁴. Interview with the author, 18 August 1999.
- ¹⁵. Ibid.
- ¹⁶. "He said he didn't want to get involved in a political issue. He said he was concerned about morale.... It was the most categorical response that I got from any officer." Rockwood to Pinsky in a telephone interview. See Mark I. Pinsky, "Changing Role of Armed Forces Complicates Military Clergy's Task," *The Orlando Sentinel*, 1 December 1996, G-1.
- ¹⁷. Interview with the author, August 18, 1999. Quotation is from Meg Laughlin, "The Rockwood File," *Miami Herald*, 1 October, 1995, Tropic section, 8.
- ¹⁸. This series of events is described in Rockwood's testimony before Congressman Dan Burton's Subcommittee on the Western Hemisphere of the House Committee on International Relations. See United States House of Representatives, 104th Congress, First Session, "Human Rights Violations at the Port-au-Prince Penitentiary, Hearings before the Subcommittee on the Western Hemisphere, Committee on International Relations", 3 May 1995.
- ¹⁹. Interview with the author, 18 August 1999.
- ²⁰. Undated memo provided to the court martial by Captain Rockwood titled "Actions to Address JTF-190's Indifference to Human Rights Concerns, Especially Its Extended Delay in Accounting for Prisoners in Haitian Prisons," paragraph 3.
- ²¹. See Record of Trial, page 912.
- ²². Undated memo provided to court martial by Captain Rockwood titled "Actions to Address JTF-190's Indifference to Human Rights Concerns, Especially Its Extended Delay in Accounting for Prisoners in Haitian Prisons," paragraph 3a.
- ²³. Interview with the author, 18 August 1999.
- ²⁴. Rockwood did not see the main cell block that night. The main cell block, which actually was just a single chamber, contained over 400 prisoners with only one square meter per prisoner. Colonel Michael Sullivan of the 16th Military Police Brigade visited the prison on 1 October 1994, and wrote in a memorandum to Joint Task Force Commander General David C. Meade, "The appalling conditions render this facility unsuitable for human habitation, and it must be a priority in our efforts to assist Haiti in its return to democracy." (Sullivan testified at Rockwood's trial that he had been sent to the penitentiary to search for weapons caches, not to investigate human rights abuses.) Paul Browne, deputy head of the International Police Monitors, visited the penitentiary on 14 October 1994, and reported that some prisoners he saw appeared to be in the last stages of AIDS. Danish monitors from the same group called the National Penitentiary the worst prison they had seen anywhere in the world. It was not until 19 December 1994, that troops were sent from the Joint Task Force to take control of the prison and begin a clean up. (See "Statement of Lawrence P. Rockwood, Captain, U.S. Army, Former Joint Task Force 190 Counterintelligence Officer Before the Subcommittee on Western Hemisphere, Committee on International Relations, U.S. House of Representatives, 3 May 1995. See also Anna Husarska, "A Conduct Unbecoming," *The Village Voice*, 11 April 1995, 22.)
- ²⁵. The accounting of Rockwood's thoughts at this point is based on an interview with the author on 18 August 1999, and several subsequent phone calls.
- ²⁶. See Major Lane's description of the arrest, Record of Trial, 1253.
- ²⁷. Record of Trial, 1255.

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- ²⁸ This exchange was reported by Rockwood in a telephone interview with the author, 20 September 1999. It is repeated in a Dateline documentary on the Rockwood case reported by Stone Phillips and broadcast in February 1995.
- ²⁹ Record of Trial, 916.
- ³⁰ Rockwood recalled this remark in a telephone interview with the author, 20 September 1999.
- ³¹ The charges and their disposition are described in detail in United States Court of Appeals for the Armed Forces, United States, Appellee, v. Captain Lawrence P. Rockwood, II, Army, (261-19-6597), Appellant, Appellant's Brief, (hereafter "Appellant's Brief") Section F, "The Charges and the Conviction," 20-23.
- ³² Appellant's Brief, 20
- ³³ This interpretation of Rockwood's thoughts is based on an interview with the author on 18 August 1999, and several subsequent phone calls.
- ³⁴ Rockwood interview with Laughlin of the *Miami Herald*. See Meg Laughlin, "The Rockwood Files," *The Miami Herald*, 1 October 1995, 6.
- ³⁵ See the first Rockwood case, "Conduct Unbecoming An Officer: Captain Lawrence Rockwood in Haiti," 6.
- ³⁶ At the time of the trial and in an appeal, the defense raised objections to what it called "unlawful command influence and conflicts of interest affecting virtually the entire command, including the court and panel members and prosecution witnesses." (Appellant's Brief, 27-39.) In a civilian court such personal and professional connections might have disqualified some members of the jury. In the military justice system the officers are considered able to set aside command influence and conflicts of influence by virtue of their professionalism. A military court of appeals rejected the objections of the defense.
- ³⁷ Congressman Burton spoke critically and at length on the performance of the U.S. Army in regard to Haiti's prisons. Referring to Captain Rockwood, he said "We have here today an officer of the U.S. military who appears to be guided by the best of motivations. It is a troubling case and it highlights the problems which arise for our military in operations such as in Haiti. I think it is important that we get to the bottom of this situation. We need to find out whether or not proper procedure was followed, whether or not the captain was trying to protect these people from human rights violations, and whether or not our military should have taken a more active position toward that prison in a much more responsible period of time." United States House of Representatives, 104th Congress, First Session, Human Rights Violations at the Port-au-Prince Penitentiary, Hearings before the Subcommittee on the Western Hemisphere, Committee on International Relations, 2 May 1995, 3-4.
- ³⁸ See Record of Trial, 280-282. See also Appellant's Brief, 20.
- ³⁹ Ibid. , 902-903.
- ⁴⁰ Ibid. , 917-918.
- ⁴¹ Ibid. , 918.
- ⁴² The Civil-Military Operations Handbook for the 10th Mountain Division includes a checklist enumerating the information the division staff should obtain about each site where prisoners were confined, including "name, address, grid coordinate, telephone number, type of facility, maximum capacity, present capacity, number of guards, capacity of kitchens, name of warden, overall condition of facility and inmates." Civil Military Operations Handbook of the 10th Mountain Division, Entry #9, ALaw Enforcement Agency Checklist. See also the Civil Affairs Operations manual of the U.S. Army (FM 41-10) at Chapter IX (Public Safety) under heading c.
- ⁴³ Later unsuccessful challenges to the verdicts the defense team argued that the jurors, who had also served with 10th Mountain in Haiti, could not vote for acquittal without implicitly condemning their own behavior.
- ⁴⁴ See President Clinton's 15 September 1994 radio address to the nation as reprinted in the Foreign Policy Bulletin, November/December 1994, 18. In the August 18, 1999 interview with the author of this case, Rockwood recalled Clinton's words on the 15th as a thrilling call to action. "This is what an army is for," he said. On a documentary on the Rockwood case on the television program "Dateline", reported by Stone Phillips and broadcast in February 1995, Rockwood quoted General Douglas MacArthur with great approval, "The protection of the weak and unarmed is the very essence and reason for a soldier's being." Rockwood described the U.S. Army as "the greatest human rights enforcer this world has ever known. The United States Army is the institution that brought the end of slavery in North America. The United States Army, with its allies, put the end to the concentration camp system. That is the true legacy of the United States Army."

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- ⁴⁵ See President Clinton's 19 September 1994 televised press conference as reprinted in *Foreign Policy Bulletin*, November/December 1994, 24.
- ⁴⁶ Record of Trial, 2560.
- ⁴⁷ Ibid. , 2564.
- ⁴⁸ See note #9 above
- ⁴⁹ Record of Trial, 2566.
- ⁵⁰ The quotation is from Bob Shacochis, *The Immaculate Invasion*, New York, Viking Press, 1999, page 151.
- ⁵¹ Record of Trial, 2588.
- ⁵² Ibid. , 2599. On this distinction, see also Adam B. Siegel, The Intervasion of Haiti, Center for Naval Analysis, Professional Paper 539, August 1996. See also Gaddis Smith, "Haiti: From Intervention to Intervasion," *Current History*, February 1995, pp. 54-58.
- ⁵³ Record of Trial, 2631.
- ⁵⁴ Ibid. , 2628.
- ⁵⁵ . See United States Court of Appeals for the Armed Forces, United States, Appellee, v. Captain Lawrence P. Rockwood, II, Army, (261-19-6597), Appellant, Appellant's Brief, 1.

Case Study 10: Conduct in Captivity: Royal Marines and Sailors May 2007

Case Summary: A boarding party from HMS *Cornwall* is captured and detained by Iranian forces in disputed waters. They become the focus for intense negotiations and media operations in Iran and the United Kingdom.

Discussion Topics: Courage, Endurance, Bearing

Target Audience: All Marines

Purpose: Introduce and analyze The Code of Conduct for Members of the United States Armed Forces.

Developed by: Second Lieutenant Tyler Johnston USMC

Discussion Leader Notes:

Table of Contents

Introduction	219
The Incident	219
Defining Resistance for American Servicemembers	220
The Hanoi Hilton	220
<i>Cornwall's</i> Boarding Party is captured.....	221
The Code of Conduct for Members of the United States Armed Forces	223
Application of The Code of Conduct.....	224
Questions for Discussion.....	227
Appendix A: British Royal Naval Personnel Involved	230
End Notes.	231

Introduction

On 23 March, 2007, fifteen members of the British Royal Navy and Marines were captured and detained by Iranian forces in the Arabian Gulf due to their presence in what the Iranian Government claimed were their territorial waters. This case study analyzes the decisions made by the British officers and enlisted personnel throughout their detention as a vehicle for studying the U.S. Armed Forces Code of Conduct. It also illustrates the necessity for an adherence to a standard of conduct by captured members of a military force. It is important to note that at the time of this incident Britain was not engaged in armed conflict with Iran.

It is of great significance for discussion leaders and participants that the United Kingdom's equivalent to the Code of Conduct, known as the rules for "Conduct under Capture," require servicemembers to give "the big four" and permit captives to provide other information as required for survival, as long as the information is not operationally sensitive.

The Incident

On the morning of 23 March, 2007 the HMS *Cornwall* was conducting security operations in the Northern Arabian Gulf. The *Cornwall* sent two boats and a supporting helicopter to board the merchant vessel *Tarawa*. Shortly after the crew embarked, the decision was made to board the merchant vessel *Al Hanin* instead, as it was believed to be carrying suspicious cargo. By 0900 the group had boarded the *Al Hanin* and reported it secure. However, after boarding the ship, the crew reported sighting Iranian Revolutionary Guard Navy presence in the area. The *Cornwall* lost communication with the boarding party immediately after this transmission. The supporting Lynx helicopter, which had returned to the *Cornwall*, was launched back to the last known position of the boarding party. Upon their return to the *Al Hainan*, the helicopter crew noticed one of the Royal Naval boats in possession of the Iranian forces.¹ The crew had been detained by the Iranian government, and remained so until 4 April 2007 when President Mahmoud Ahmadinejad released them as a "gift" to the U.K.

The Iranian justification for their capture of the British forces lies in the location of the boarding crew when it was captured. Britain's Ministry of Defense claimed that the

boarding party was captured 1.7 nautical miles within Iraqi territorial waters. The Iranian government stated a different location for the apprehension, but one still inside Iraqi territorial waters. When the fact that their version of the location was still within Iraqi waters came to light, Iran provided a “corrected” location one nautical mile away from the first and now within Iranian waters. The British government debated both Iranian positions stating that, “the “corrected” (Iranian) location was more than two nautical miles away from its own version, as recorded by HMS *Cornwall*’s GPS data equipment.”²

In detaining *Cornwall*’s boarding party, the Iranian government proved willing to take a course of action so precipitous that it can be considered rational only if the risk of British retaliation was outweighed by the value the Iranians placed on their captives. If any among the boarding party had made this analysis, he or she may have concluded that the boarding party was captured for their media value to the Iranian Government. This, in turn, could have influenced the boarding party’s stance on resistance.

Defining Resistance for American Servicemembers

The Code of Conduct for Members of the United States Armed Forces demands that American Service members taken prisoner maintain a standard of resistance to the actions of their enemy captors. Defining this standard of resistance is the most difficult part. The classic “Big Four and Nothing More” response (name, rank, serial number, and date of birth) outlined by the Code is insufficient to clearly define an acceptable level of resistance. Servicemembers imprisoned by a hostile nation require more than a cookie-cutter response; they require a level of tenacity and determination that is unimaginable to someone not in their shoes.

The Hanoi Hilton

In the 1960’s and 70’s, a handful of American pilots would be tested in the prison camps of North Vietnam. Their experiences invalidated the “Big Four” approach, and redefined the standard of resistance for prisoners in the hands of their enemies.

On 9 September 1965, U.S. Navy Lieutenant Commander (LCDR) James Stockdale’s A-4 was shot down over North Vietnamese territory, where he became the

220

most senior officer detained in Vietnam during his seven and a half years in captivity. In an essay entitled “Master of My Fate,” he wrote “If you want to protect yourself from ‘fear and guilt’ – and those are the crucial pincers, the real long-time destroyers of will – you have to get rid off all your instincts to compromise, to meet people halfway. You have to learn to stand aloof, never give openings for deals, never level with your adversaries.”³ This type of prisoner mindset enables an exemplary standard of resistance. Stockdale’s philosophy, forged in the Hanoi Hilton, is the gold standard for any soldier, sailor, airman, or Marine taken captive today.

Cornwall’s Boarding Party is captured

Immediately after Iranian forces arrived at the *Al Hainan*, Royal Navy (RN) Lieutenant (LT) Felix Carman ordered his boarding party to surrender their weapons and comply with Iranian demands. LT Carman “judged that, if they had resisted, there would have been a major fight, one we could not have won, with consequences that would have had major strategic impact.”⁴ It is difficult for someone who was not at the scene of the boarding to state that the crew should have resisted capture by starting a firefight. The order to resist given by LT Carman could have led to the deaths of his sailors and Marines. However difficult, LT Carman’s decision to surrender was followed by a pattern of compliance with the Iranian captors.

Five days after the boarding party’s capture, Iranian state television aired an interview with Leading Seaman Fay Turney in which she stated they “had ‘obviously’ trespassed but their captors had been friendly.” Two days later Iranian TV broadcasted an interview with a second crewman, Nathan Summers, who apologized for “trespassing” in Iranian waters.⁵ Throughout the thirteen-day detention, various other crewmembers allowed Iranian officials to videotape them sitting in comfort, with smiles on their faces, apologizing for entering Iranian waters. Turney even wrote a letter calling on the British government to withdraw forces from Iraq. Royal Marine (RM) Captain (Capt) Chris Air allowed himself to be videotaped in front of a map noting the position of the capture in Iranian waters.

In order to measure the standard of resistance created by the British officers and upheld by their crew during the detention it is necessary to once again travel back to the

Vietnam War, and analyze the conduct of American prisoners in the Hanoi Hilton. When LCDR James Stockdale realized that he was going to be used in a Vietnamese propaganda tape, similar to the situation posed to the British crew in 2007, he reacted somewhat differently. After the Vietnamese prepared Stockdale for a video to highlight the 'humane treatment' of American prisoners in Vietnam he responded by beating his face with a wooden stool and slashing his body with a dull razor.⁶ He disfigured himself so badly that his captors could not use him in the propaganda attempt. Actions like this inspired Stockdale's men to uphold the standard of resistance. "He had told his fellow prisoners that they were honor-bound to resist, and he led by example."⁷ This stands in stark contrast to *Cornwall's* boarding party, whose members felt "opposing their captors was 'not an option'".⁸

Epilogue

Nearly two weeks later, the boarding party was released. The British government commissioned the Fulton Report, a classified analysis of the incident. Britain's Defense Secretary, Des Brown, said the events "were not the result of a single gross failing or individual error", but were due to "the coming together of a series of vulnerabilities" that exposed *Cornwall's* sailors and marines to exploitation.⁹

In an interview with the BBC, LT Carman's father Paul criticized the report for its shortcomings. Proud of his son, Mr. Carman added: "We think he acted in an exemplary fashion, and that basically saved the lives of himself and all the people who were there, so we're really shocked and very depressed about the prospect that there might be some criticism of him."¹⁰

The Code of Conduct for Members of the United States Armed Forces

Now that the actions of the British crew have been analyzed, it is possible to use their situation as a case study for American Service members faced with a similar predicament. First, it is necessary to review the six articles of The U.S. Code of Conduct:

- I. **I am an American, fighting in the forces which guard my country and our way of life. I am prepared to give my life in their defense.**
- II. **I will never surrender of my own free will. If in command, I will never surrender the members of my command while they still have the means to resist.**
- III. **If I am captured I will continue to resist by all means available. I will make every effort to escape and aid others to escape. I will accept neither parole nor special favors from the enemy.**
- IV. **If I become a prisoner of war, I will keep faith with my fellow prisoners. I will give no information or take part in any action which might be harmful to my comrades. If I am senior, I will take command. If not, I will obey the lawful orders of those appointed over me and will back them up in every way.**
- V. **When questioned, should I become a prisoner of war, I am required to give name, rank, service number, and date of birth. I will evade answering further questions to the utmost of my ability. I will make no oral or written statements disloyal to my country and its allies or harmful to their cause.**
- VI. **I will never forget that I am an American fighting for freedom, responsible for my action, and dedicated to the principles which made my country free. I will trust in my God and in the United States of America.**

Application of The Code of Conduct

Britain was not in a state of war with Iran when *Cornwall's* boarding party was detained. In order to draw lessons for American service members who find themselves in a similar situation it is necessary to analyze the three scenarios to which The Code of Conduct can be applied. First, the most important thing to consider is that The Code of Conduct serves as a guide to U.S. service members who find themselves in any detention situation. Although designed for evasion and prisoner of war (POW) situations, the spirit and intent of The Code of Conduct are applicable to service members subjected to other hostile detention, and such service members should conduct themselves consistently in a manner that avoids discrediting themselves and their country. The Code includes basic information useful to U.S. POWs in their efforts to survive honorably while resisting their captor's efforts to exploit them.

The complex circumstances of detention not incident to an armed conflict with a foreign power (e.g., governmental detention and terrorist captivity) require special instructions. In these situations, the goal is that "every reasonable step must be taken by U.S. military personnel to prevent exploitation of themselves and the U.S. Government. If exploitation may not be prevented completely, every step must be taken to limit exploitation as much as possible."¹¹ This policy was developed in response to the seizure of the U.S. Embassy in Iran on 4 November 1979:

The Code of Conduct is a moral standard toward which the U.S. [service member] should strive. Its spirit and intent embody the basic values of the military profession – patriotism, loyalty, obedience, and deep moral conviction. The Code's goal, survival with self-respect and honor, is universal and eternal. The several precepts of the Code are phrased deliberately in the first person as a personal standard for the individual. Viewed as a set of principles that serves as a personal guide and standard of expected behavior, the Code provides direction and guidance that can be retained under conditions of stress. It is not a means for judgment nor a vehicle for enforcement, but serves as a guide to help the US [service member] survive captivity with honor and dignity.¹²

Now that the spirit and intent of The Code of Conduct have been defined, it is possible to examine the three situations to which it can be applied. The first is the detention of prisoners by a state that is engaged in International Armed Conflict with the U.S. In this situation The Code of Conduct for Members of United States Armed Forces applies. The Code should be followed to the utmost of the prisoner's ability. The next is detention by non-state actors, such as terrorists. In this scenario U.S. service members are permitted to attempt escape and accept release, as long as they do not violate their honor or behave in a way that would be detrimental to the United States. The final scenario, and the one that most directly applies to the situation with Britain and Iran, is detention by a hostile state with which the United States is not involved in International Armed Conflict.

Here Iran is the hostile state with which the United Kingdom is not engaged in armed conflict. In this situation, Marine Corps Order 3460.1A, *Training and Education Measures Necessary to Support The Code of Conduct*, states that, "Once in the custody of a hostile government, regardless of the circumstances that preceded the situation, detainees are subject to the laws of that government."¹³ For example, in this scenario, under the Law of War, an American detainee is not permitted to attempt escape from the hostile government because that government is not involved in armed conflict with the United States. This is because, "any aggressive, combative or illegal behavior...might complicate their situation, their legal status, and any efforts to negotiate a rapid release."¹⁴ Also, in this second situation, "Marines should not refuse to accept release, unless doing so requires them to compromise their honor."¹⁵ This poses the question of whether the British crew 'compromised their honor' in their compliance with Iran.

It is also necessary to note that America found itself in a situation similar to the scenario in this case study when LT Shane Osborne landed his EP-3 Aries II aircraft on Hainan Island rather than ordering his crew to parachute from the crippled aircraft at sea after colliding with a Chinese fighter. Various schools of thought criticize LT Osborne's decision. However, the United States was not engaged in armed conflict with China during this incident. Once Osborne landed on Chinese territory, he became a prisoner of a government hostile to the United States, much like the British sailors and

Marines in Iran. Between the extremes of Stockdale and Carman, Lt Osborne's conduct and that of his crew was closer to that of the British lieutenant than the American admiral.

Questions for Discussion

1. The second article of the Code of Conduct for Members of the U.S. Armed Forces states: "I will never surrender of my own free will. If in command, I will never surrender the members of my command while they still have the means to resist." When the Iranian Guard first confronted the British crew in the Arabian Gulf, LT Felix Carman, the crew's commanding officer, complied with Iranian demands. As stated in the incident report above, LT Carman believed that resisting the Iranian force would have been a fight his crew was not capable of winning.

- Should LT Carman have done more to resist the Iranian capture? According to The U.S. Code of Conduct, did his actions uphold a standard of resistance?
- Did LT Carman's immediate compliance with Iranian forces create a command climate throughout the course of the incident which led his subordinates to believe that resisting was not an option?

2. The spirit and intent of The Code are applicable to service members subjected to any hostile detention, and such service members should conduct themselves consistently in a manner that avoids discrediting themselves and their country. Throughout the course of the incident the British crew complied with Iranian demands. They allowed Iranian video footage to portray them living in relative comfort and being treated fairly. Various crew members even apologized for their 'mistake' of entering Iranian waters.

- According to The U.S. Code of Conduct, did the British crew members 'avoid discrediting themselves and their country?'
- Throughout the course of their detention, did the British sailors and Marines uphold a standard of resistance consistent with The U.S. Code of Conduct?
- The apologies made by British crewmembers directly refuted the position taken by the British government. The crew stated that they were in Iranian waters during the initial capture while their government stated that they were not. Did this admittance of transgression into Iranian waters by the British crew members dishonor the nation to which they had sworn allegiance?

3. At one point during the detention Royal Marine Captain Chris Air allowed himself to be videotaped in front of a chart portraying the location of the capture in Iranian waters, thus submitting to the demands of Iranian captors. The British officers also allowed the Iranians to display their fair treatment of the British sailors and Marines via video footage.

- Analogous with question one, did the actions of the British officers during the detention encourage their enlisted personnel to resist Iranian demands.
- If the British officers had upheld a higher standard of resistance throughout the incident would this have encouraged their subordinates to do the same?
- During his time as a prisoner of war in Vietnam, Admiral Stockdale's actions exemplified the manner in which the senior man in detention must conduct himself. He believed it was his duty to set the example for every other prisoner in country. His behavior proved this. Where does the responsibility fall when a group of service members are detained? Is there still a chain of command? Whose duty is it to define and uphold the standard of resistance? Did the British officers create a climate of resistance in this incident?

4. As stated at the beginning of this case study, when a service member is detained by a hostile government with which the United States is not involved in armed conflict, the service member "should not refuse to accept release, unless doing so requires them to compromise their honor."¹⁶ On 4 April 2007, Iranian president Mahmoud Ahmadinejad released the British crew, ending their thirteen day detainment. Ahmadinejad claimed that their release was a 'gift' to the British government. The British crew's willingness to comply with Iranian demands and admit that they had trespassed into Iranian surely played a part in the rapid end to their detainment. The British government was not engaged in armed conflict with Iran during this incident. Had the crew been American, according to The U.S. Code of Conduct, they would have been permitted to accept release from Iran. However, the citation above reads that this release should not be accepted should it cause the service member to 'compromise their honor.'

- By complying with Iranian demands, allowing themselves to be used for video propaganda, and apologizing for the British trespass into Iranian waters, did the British crew compromise their honor?
- Did the British Royal Naval personnel tarnish the reputation of their nation by accepting Ahmadinejad's gift to the U.K. in their release?
- Should the crew have refused to accept release until Iran admitted their wrong doing in the incident?

5. It has been stated various times throughout this case study that Britain was not engaged in armed conflict with Iran during this incident. As outlined earlier, U.S. doctrine states that even if detainees do not find themselves in a genuine prisoner of war situation, the spirit of resistance inherent in the Code of Conduct should still be upheld. This is especially applicable to America's role in the war on terror today. Unless the U.S. declares war on a nation in the Middle East, virtually any prisoner situation that could arise out of this war would be one with a group not engaged in armed conflict with the U.S.

- Can the example set by the British crew during their Iranian detention be used to ensure that Americans do not make the same mistakes if ever found in a similar situation? How?
- How does The Code of Conduct prevent U.S. service members from disgracing themselves and their nation?
- Is The Code of Conduct still applicable on today's battlefield, where the enemy is not necessarily a member of an established government?

6. What resulted from the boarding party's actions while captured? Had they taken a stance advocated by the U.S. Code of Conduct, what might have resulted? Consider results and impacts on:

- The boarding party
- British servicemembers deployed to the Persian Gulf
- The UK's strategic environment

Appendix A: British Royal Naval Personnel Involved¹⁷

RM Captain Chris Air
RN Lieutenant Felix Carman
RN Chief Petty Officer Gavin Cavendish
RN Leading Seaman Faye Turney
RN Leading Seaman Christopher Coe
RN Operator Maintainer Arthur Batchelor
RN Operator Maintainer Simon Massey
RN Sailor Nathan Summers
RN Sailor Andrew Henderson
RM Dean Harris
RM Paul Barton
RM Mark Banks
RM Danny Masterton
RM Joe Tindell
RM Adam Sperry

End Notes.

¹ "In full: Defence Secretary's Statement." BBC News. 16 April, 2007.
http://news.bbc.co.uk/2/hi/uk_news/politics/6560841.stm

² "The Capture of the UK Crew, BBC News." 30 March, 2007.
http://news.bbc.co.uk/2/hi/in_depth/6502805.stm

³ James Stockdale, "Stockdale on Stoicism II: Master of My Fate." (Published by The Center for the Study of Professional Military Ethics, United States Naval Academy, Annapolis), 2001, 8.

⁴ "In full: Defence Secretary's Statement." BBC News, 16 April 2007.
http://news.bbc.co.uk/2/hi/uk_news/politics/6560841.stm

⁵ "Timeline: UK Iran Stand-off." BBC News, 3 April 2007.
http://news.bbc.co.uk/2/hi/uk_news/6502801.stm

⁶ Jack Jacobs, "A Museum for the Most Honorable," MSNBC, 25 May 2007.
<http://www.msnbc.msn.com/id/18773568/>

⁷ Ibid.

⁸ Bridget Kendall, "Mystery Shrouds UK Sailors' Saga," BBC News, 7 April 2007.
http://news.bbc.co.uk/2/hi/programmes/from_our_own_correspondent/6533987.stm

⁹ "Failings Over Captured Sailors," BBC News, http://news.bbc.co.uk/1/hi/uk_politics/6765903.stm, accessed 30 November 2007.

¹⁰ "Failings Over Captured Sailors," BBC News, http://news.bbc.co.uk/1/hi/uk_politics/6765903.stm, accessed 30 November 2007.

¹¹ Joint Chiefs of Staff Guide 5260. Service Member's Personal Protection Guide: A Self-Help Handbook to Combating Terrorism, July 1996, 23.

¹² JCS Memorandum 290-81, Code of Military in Hostage Situations, 5 August 1981.

¹³ Marine Corps Order 3460.1A, Training and Education Measures Necessary to Support The Code of Conduct.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Profile: Captured UK Personnel, BBC News, 5 April 2007, <http://news.bbc.co.uk/1/hi/uk/6518203.stm>

Case Study 11: Who Lives Who Dies? Combined Action Group, Phu Bai

Case Summary: A Combined Action Platoon is attacked by Viet Cong guerillas in Phu Bai province in 1967. Casualties include the squad leader and several of his Marines. Every villager participating in the Popular Forces is executed. Lieutenant Colonel John Miller takes steps to protect his Marines, but at cost to what or whom?

Discussion Topics: Courage, Justice, Loyalty

Target Audience: NCOs, Company Grade Officers

Purpose: This case study aims to initiate discussion dealing with the issues of Rules of Engagement v. wartime realities; and properly engaging civilian populations in conflict zones. It should also be used to foster analysis of the recommendations given by Lieutenant Colonel John Miller on dealing with similar situations in the future; and also to discuss the role of non-combatants' neutrality.

Developed by: Colonel Paul Roush, USMC (Ret)

Discussion Leader Notes:

Table of Contents

Introduction – The Combined Action Program	235
LtCol John Miller	235
A CAP Is Overrun.....	236
Miller's Dilemma.....	238
Miller's Proposition	241
Discussion.....	243
Questions For Discussion	245
End Notes	247

Introduction – The Combined Action Program

This imaginative program integrated Popular Force (PF) soldiers native to a given area with U.S. Marines, in order to provide security to hamlets and villages in cleared or semi-cleared areas.¹ From a single platoon in May 1965, the program grew by the summer of 1967 to seventy-five platoons.² The basic unit in the Combined Action Program was the Combined Action Platoon (CAP), which included fourteen U.S. Marines, a U.S. Navy corpsman, and thirty-five PF's.³ who worked in cooperation with the Marines and sailors.⁴

The CAP's missions were spelled out in I Corps Coordinator Instruction 5401.3 G/drb dated 16 July 1967:

- a. Destroy the communist Viet Cong infrastructure within the village or hamlet area of responsibility.
- b. Provide public security and help maintain law and order.
- c. Protect the friendly political/social infrastructure.
- d. Protect bases and communication lines within the village and hamlets in which they are located by conducting day and night patrols and ambushes in their assigned areas.
- e. Contribute to combined operations with Regional Forces and other Popular Force, Army of the Republic of Viet Nam, or Free World Military Assistance Forces in their activity area.
- f. Participate in civic action and conduct propaganda against the Viet Cong.
- g. Participate in Revolutionary Development activities to the maximum extent possible with the accomplishment of the foregoing missions/tasks."

These missions would be ambitious under the most seasoned leadership, but were especially daunting, given that the CAP's senior Marine was typically a sergeant aged twenty-two or younger. Only half of these young men were high school graduates.

LtCol John Miller

Lieutenant Colonel (LtCol) Miller was the Combined Action Group's (CAG) Commanding Officer (CO), responsible for the CAPs throughout the two northern

provinces of the Republic of Vietnam (RVN). His CAG headquarters was co-located with the headquarters of the 3rd Marine Division (3rd MarDiv) at Phu Bai.

From the time he had assumed command of the Phu Bai CAG just two months earlier, LtCol Miller demonstrated his deep commitment to the CAG's mission. Miller made his presence felt, spending much of his time away from the headquarters, visiting as many of the more-than-thirty CAPs as he could. Miller ignored the threats of ambushes and mines along the roads, occasionally accompanying Marines on their patrols and ambushes. He significantly increased the patrolling and ambush activity of the CAPs in order to enhance local security.

Miller had intentionally fostered relationships with the Vietnamese district chiefs throughout Thua Thien and Quang Tri provinces. He initiated a system of food supplements for the Vietnamese soldiers who worked alongside the CAPs. When these local soldiers behaved heroically, LtCol Miller took steps to present them with American decorations for valor. He even arranged for the visiting Commanding General (CG), Fleet Marine Force, Pacific to present the Bronze Star to a PF soldier from one of the CAPs near the 3rd Mar Div Headquarters, and invited every Vietnamese official in the region to attend the ceremony.

Miller's actions were testament to his commitment to mission success and to his Marines. Not a single Marine doubted that the "old man" cared for him, understood the risks he faced, and was willing to share those risks. The PF and Vietnamese Government's officials in the region also understood his devotion to duty. Miller's dedication was complete, but even this could not assure victory for Miller and his Marines.

A CAP Is Overrun

A non-commissioned officer (NCO) on duty at Headquarters, CAG, Phu Bai, Vietnam, roused LtCol Miller from a deep sleep shortly before 4:00 a.m. The news was not good: radio traffic from a Combined Action Company (CACO) indicated that a large force of Viet Cong (VC) guerrillas had attacked a CAP in Thua Thien Province. Initial

reports held little hope for the survival of the Marines and Vietnamese soldiers in the CAP “A” 6/9 compound in Phu Loc village.

When a barrage of shoulder-fired rockets and satchel charges began to detonate in the CAP “A” 6/9 compound, the CAP’s radioman immediately called the CACO for help. Shortly after the call, the CACO lost all contact with CAP “A.” Helpless, the CACO relayed the call for help to his seniors at the Phu Bai CAG. There, LtCol Miller struggled to provide an adequate response.

Miller’s immediate concern was for the welfare of CAP “A” 6/9’s Marines. First, he looked to the patrol overlays, where he saw that a portion of the CAP was out on patrol. Unable to contact the patrol from the CAG Headquarters, Miller looked elsewhere for help.⁵

He considered requesting infantry support from the 3rd MarDiv, either helicopter-borne or foot-mobile. The time involved in alerting, mounting-out, and transporting a viable helicopter-borne force to Phu Loc made that option useless. Time was of the essence, as such attacks were carefully coordinated, violent, and quick; a combination that left no room for delay. Miller requested the infantry battalion at Phu Bai to commit a reaction force along the main road to the village of Phu Loc, a distance of about five miles. However, based on the battalion commander’s recommendation, the division operations officer denied the request, citing that lost communications with the CAP implied few, if any, survivors; and the possibility that the attacking VC may have placed mines, ambushes, or both, along the only road to the village.

LtCol Miller finally asked for artillery fire to support the Marines under attack, but his request was denied due to the rules of engagement (ROE), which prohibited firing on populated areas.⁶ As the CAG CO, he was disturbed at his inability to support his Marines in the field. Miller had another nagging concern – that of the continued health of the all-volunteer Combined Action Program. Marines volunteering for program attended two weeks of training with LtCol Miller at the CAG Headquarters before being assigned to CAPs. What was he going to tell those Marine volunteers? Should they hear that their lives would be sacrificed in order to avoid harming Vietnamese civilians? What would be the effect on morale, retention and recruitment for the CAPs?

Hoping to create an avenue for an effective response, Miller contacted his senior in the chain of command, the Combined Action Director at Headquarters, III Marine Amphibious Force (III MAF), Colonel Bill Elliott. When LtCol Miller notified the director about the events at CAP “A” 6/9, his frustration over the failure of local Marine tactical units to come to the aid of his Marines was evident. Miller also made it clear that he intended to put an operational CAP back in the compound within hours.

When the patrolling CAP “A” 6/9 Marines returned to their compound, they learned their five comrades, including their squad leader, as well as the PF⁷ soldiers in the compound, had been killed. In addition, the compound itself was all but destroyed. The patrol reestablished radio contact with the CACO headquarters. Shortly after, LtCol Miller and the CACO commanding officer arrived on site to begin working out the details for reconstituting CAP “A” 6/9.

Miller’s Dilemma

Within days of the attack on CAP “A” 6/9, CG, III MAF sent a related message to all subordinate commands.⁸ It was clear to LtCol Miller the message was a response to the frustrations he voiced to Col Elliott the morning of the attack. Referring pointedly to the events that contributed to the disaster in Phu Loc village, the message made three points: first, it said coordinated assaults of highly trained, VC sapper⁹ units posed an extremely serious threat to CAPs; second, it directed nearby tactical units to assist CAPs under attack; third, it called for the use of artillery fire in the event of an attack on a CAP. The message involved no substantial changes to the status quo, leaving Miller with mixed emotions; on one hand he was pleased that III MAF was addressing the subject. On the other, he recognized the message was simply an injunction to “do better” and “try harder.” LtCol Miller was convinced that fundamental change was necessary if the Combined Action Program were to succeed.

The heart of the matter, from Miller’s perspective, was the VC’s ability to attack the CAPs with impunity. The VC planned meticulously and rehearsed their attacks repeatedly. As a result, the VC could mass forces in numbers overwhelmingly superior to the number of defenders in CAP compounds with deadly effect. The compounds

themselves were so small – typically about the size of a basketball court – that any breach in the perimeter defense put the attackers close to the compound's center.

Due to the VC's ability to achieve tactical surprise, the Marines had very little time available to prepare an effective response. Perhaps an hour was required to alert, provide briefings for, and move a reaction force of Marine infantryman to the area of the attack; in Miller's mind, this heightened the importance of immediate artillery support.

Artillery could range the battlefield, firing over a distance of fifteen or more miles. It was lethal – a single exploding artillery round shatters into hundreds of lethal, jagged, metal fragments, capable of producing many casualties. An artillery barrage of a hundred rounds could have disastrous consequences for an attacking force caught in the open. Most importantly to Miller, artillery was responsive – calculation of firing data, orientation of the artillery, and preparation of the rounds required approximately five minutes. The rounds would arrive on target in less than a minute from the time of firing.

On the surface, the use of "artillery as a reaction force" seemed like a reasonable option. There were, however, several major obstacles. One was the delay involved in obtaining permission to use artillery in this way. The existing ROE allowed its use in populated areas only with approval of the local Vietnamese authorities on a case-by-case basis. Since nearly all CAPs were located in populated areas, the injunction from III MAF seemed to LtCol Miller to be hollow, due to the bureaucratic constraints it entailed - gaining approval to fire required going up the military chain of command, then down the chain of command of the Vietnamese leadership, then back up the Vietnamese chain and back down the military chain. Even without the problems of locating all the appropriate authorities in the middle of the night, and overcoming the cultural barriers to communication, this system required so much time that artillery became a non-option. By the time artillery was available, the attack would be over and the local villagers would be the only living humans in the target area.

From LtCol Miller's perspective, the III MAF message asked subordinate commands to provide effective fire support to the CAPs without giving them the resources needed. Even if III MAF could resolve the obstacles to timely artillery support, a larger one would remain – artillery's potential to inflict large numbers of civilian casualties.

Again and again, Miller would sort the issue through. If he ruled out artillery, he needed advanced warning of VC intentions. Local Vietnamese civilians often learned of massing VC forces, as they had hours before the attack on CAP “A” 6/9, but they largely remained silent. If the villagers really valued the quality of life improvements made possible by the CAP’s civic action projects¹⁰, why wouldn’t they warn the CAPs?

Miller knew why. When villagers warned the CAPs of VC presence, the VC reprisals came swiftly and with brutality. The one thing more important to the villagers than quality of life was life itself, and the VC knew this. If the villagers valued their lives, they would not warn the CAPs.

This brought LtCol Miller back to the beginning of his problem. The CAPs were attempting to win by supporting villagers militarily and civically. This depended on a committed relationship between the Marines and the villagers. If the CAPs couldn’t survive VC attack, they would never earn the commitment of the villagers. But to survive, they needed advance warning from the villagers. That, or artillery; and artillery’s imprecision made it a threat to the villagers.

Artillery could also be a threat to the CAPs who were not dug in; but once in fighting holes, they would be relatively safe while the attacking VC would suffer severe casualties. Casualties could hamper the VC’s ability to swiftly withdraw from the battle, allowing friendly infantry enough time to arrive and inflict additional casualties. And that, thought Miller, just might discourage the VC from attacking other CAP compounds in the future.

While some among the villagers rationalized their silence as neutrality, Miller didn’t see it that way. He saw their silence as a complicit alliance with the Viet Cong, one that denied a response option for CAPs under attack.

LtCol Miller believed it was necessary to force the local Vietnamese civilians to commit wholeheartedly to or reject altogether the presence of Marines in their villages. They should be free to make this choice and, in effect, choose either to enjoy or to forego the benefits the CAP brought to them, their families, and their community. Once committed to the CAPs, villagers would be compelled to warn the CAPs of impending attack (and risk VC reprisal), or be resigned to the perils of incoming artillery rounds.

Miller's Proposition

Within a week of receiving the III MAF message concerning reaction forces for the CAP's, LtCol Miller composed a letter addressed to the Deputy Commanding General, III MAF, via the Director, Combined Action Program, in which he provided details of the event. The letter included three recommendations:¹¹

Recommendation #1

...that a policy be established whereby instantaneous artillery support in the immediate area of all CAP's be approved in writing by Vietnamese authorities down to the District Level and by CG, III MAF." If approved, this recommendation would eliminate the delay that currently prevents the application of timely artillery fire. In essence, an attack by the VC would elicit a rapid and deadly response without the need for any further authorization...

Recommendation #2

...that the policy be publicized by Vietnamese officials down to the smallest hamlet to ensure that all the people are aware that future attacks will be met with commensurate force. They must realize that their best hope lies in reporting the presence of any Viet Cong force in the vicinity of a CAP." This recommendation, if approved, would force the village or hamlet to choose which risks it prefers. On the one hand, there is risk of harm at the hands of the Viet Cong for cooperation with the CAP. On the other, there is risk from U.S. artillery fire in the event of a Viet Cong attack on the CAP. The basic thrust of this recommendation is that the consequences of an artillery response to a Viet Cong attack are likely to be more painful than the Viet Cong response to the villager's cooperation with the CAP.

Recommendation #3

that this policy be carried out, regardless of the location of any future attack, to convince the population that a negative neutrality is detrimental to themselves, their property, the

Combined Action Program, and the established government. Consequently, the Viet Cong will know that the people cannot be utilized as protective shields. Delineation of opposing forces will become more pronounced as animosity grows between the people and the enemy.”

This third recommendation means the villagers cannot coexist peacefully with both the VC and the Combined Action Program. They will have to choose one side or the other, and can no longer straddle the fence.

LtCol Miller read his letter yet again. He rehearsed in his mind the competing arguments. He knew the magnitude of the issues he was raising. He knew he was recommending a course of action that could be a public affairs nightmare. It was not hard to imagine a scenario in which scores of old men, women, and children would be killed or wounded as a result of artillery fire deliberately brought to bear on a village.

On the other hand, denial of his request could cause a public outcry for different reasons altogether. Denial could easily be interpreted as a Marine Corps decision to withhold help from young enlisted Marines who might be saved with the artillery support, and who would certainly die if it were not forthcoming. It is one thing to say the isolation of CAPs makes it very difficult to get help to them in time, but it is quite another to say that help is readily available in the form of artillery support, but it will be withheld in order to minimize risk to the local villagers.

Even though he believed the Vietnamese civilians were less than fully innocent, LtCol Miller knew there were serious legal and moral questions in his recommended approach. Violations of the Law of War are also violations of the Uniform Code of Military Justice (UCMJ), the legal regulations governing the U.S. Armed Forces. The Law of War draws heavily upon the provisions in the Hague and Geneva Conventions. That law requires parties to a conflict to distinguish between the civilian population and combatants. Specifically, it prohibits attacks that may be expected to cause incidental loss of civilian life, injury to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated. It specifies that non-combatants cannot be deliberately attacked at any time. On the other hand, the case could be made that firing to protect one’s troops who are under attack is

not an attack upon the civilians. Any casualties could, it seemed, be viewed as collateral damage. Also, the concrete and direct advantage LtCol Miller anticipated was nothing less than success for the missions assigned the CAPs. He did not want to expose himself, his seniors, and his subordinates to charges of war crimes, but he wanted to do everything he could to protect the lives of his Marines and to ensure the mission's success.

These were the realities as LtCol Miller saw them. And they were the questions troubling him as he pondered whether or not to send his recommendations forward.

Discussion

This case provides the opportunity to discuss questions of first importance. How does one make choices when one's actions will decrease harm to one group and increase it for another?

The moral standard of *natural law* states that actions are right when they promote the values derived from the natural inclinations of human beings and wrong when they suppress those values. The values at issue are life, procreation, knowledge and sociability. Since loss of life or potential loss of life is at the heart of this case, it is clear that one of those inclinations is at issue.

Natural law uses two qualifying principles to help in the decision process. Those principles are the *law of forfeiture* and the *law of double effect*.

The law of forfeiture says that someone who threatened the life of an innocent person forfeits his or her own right to life. The law of forfeiture does not apply because the innocent civilians who live near the compound are not threatening the lives of innocent persons, so there is no basis for them to be made to forfeit their right to life. In a way, LtCol Miller argues that their silence constitutes a threat.

The law of double effect provides justification only if four prerequisites are met. First, the act, apart from the consequences of the act, must be good. Second, the bad effect cannot be avoided if the good effect is to be achieved. Third, the bad effect must not be

the means of producing the good effect. The final criterion has to do with proportionality. The good effect must be at least equal in importance to the bad effect.

When answering the questions below be sure to keep in mind the possible tactical, operational, and strategic effects.

Questions For Discussion

1. In this case, the Marines in the CAP were unable to receive timely and effective support that possibly could have saved their lives. That support, which existed, was unavailable to the Marines and PF forces under attack due to the ROE, a haphazard communication structure, and a complacent native citizenry.
 - How do ROE affect battlefield realities? What consequences, positive or negative, do they have?
 - What is the mission in this study (broadly; the Marine mission in this province as a whole)
 - Is it reasonable to expect combat troops to abide strictly by the Law of War?
 - If you were placed in this situation, and you knew your fellow Marines' lives are in danger, do the ROE apply? Why or Why not?
 - The use of artillery is suggested in this case, why?
 - If you were to take the action suggested in this example, using artillery to bombard the conflict zone, what are some of the possible outcomes? Can these be seen as positive or negative? What would this mean for the outcome of the mission as a whole?
2. LtCol Miller believed civilian casualties would be unfortunate; however, they would also serve as a catalyst to motivate the population into action against the enemy. LtCol Miller had chosen to adopt a *Total War* approach to prevent other attacks from endangering Marines.
 - Do you believe this approach to be valid?
 - How could you expect the population to react?
 - In operations such as the CAP's and counterinsurgency (COIN), where cooperation of the citizenry is the lifeblood for success, do you believe a *Total War* approach would strengthen your position or that of your enemies?
3. Rules of Engagement and Laws of Modern Warfare played a predominant role in how this case unfolded.

- Every U.S. service member swears or affirms that they will support and defend the Constitution without any mental reservation or purpose of evasion. What does it mean to take such an oath?
 - Why are the Geneva Conventions cited in this study?
 - As the conduct of warfare changes; strategies, tactics, participants, i.e. conventional versus asymmetric; do the Geneva Conventions, which were adopted after WWII still apply? Why or why not?
 - In this case study, what was the main objective? Was it the destruction of the enemy forces or gaining the trust and cooperation of the population, or both? Which is more important in this setting?
 -
4. LTC Miller's request of support for the CAP [artillery] had to be vetted through various officials before being approved. This process negated the artillery's potential timely response.
- What request to procedural change did LTC Miller make?
 - How effective would this change be? Positive or Negative?
 - Ramifications for the over-all objective?
5. LtCol Miller was unhappy with the response and lack of action after he informed his seniors about the attack on the CAP.
- Did Col Elliott do enough?
 - What else could have been done?
6. Leaders in COIN operations must appreciate the impact of their tactical decisions at the operational and strategic levels of war.
- How much danger or risk should noncombatants assume by virtue of choosing to live in a contested area?
 - How much danger or risk should uniformed service members shoulder for noncombatants?

- To which group does the commander owe greater protection? How do LtCol Miller's actions compare to your answer?

End Notes

¹ A cleared area would indicate an area in which organized, armed resistance by anti-government forces would not be likely. Such resistance would be encountered only in exceptional circumstances. Operation in a semi-cleared area would entail somewhat more risk, but would still permit relative freedom of operation.

² Headquarters III Marine Amphibious Force I Corps Coordinator Instruction 5401.2 3G/drb dated 16 July 1967. (Subject: I Corps/III MAF Combined Action Program Joint Policy).

³ Headquarters III Marine Amphibious Force Order 3121.4a 3G/WRC/drb dated 17 July 1967. (Subject: Standing Operating Procedure for the Combined Action Program).

⁴ Command and control of the CAPs was rather complex. A number of CAPs (normally three to five) constituted a Combined Action Company (CACO). The CACO headquarters was commanded by a U.S. Marine Corps officer – normally a Captain -- and located at the headquarters of the Vietnamese District Chief. The CAPs were under the direct control of the Vietnamese District Chief in the district in which the CAP was located. This control was exercised by means of a Combined Action Team (CAT), located at the district headquarters. The CAT included the command elements of a given CACO and the Vietnamese equivalent that was responsible for the PF platoons. The CACOs within a specified area (in this case, the two northern provinces of the Republic of Viet Nam (Thua Thien and Quang Tri) were placed under the command of a Combined Action Group (CAG), commanded by a U.S. Marine Corps Lieutenant Colonel. The CAGs reported to the CG, III MAF through his III MAF Combined Action Director.

⁵ CAG regulations required each CACO to forward patrol routes for each of its CAPs to ensure coordination with other friendly units that might be moving in the same area at the same time. This was a means of reducing the likelihood of casualties from friendly fire and ensuring that patrols did not become too predictable.

⁶ Rules of engagement are the formal rules that set forth the circumstances and limitations under which U.S. forces may initiate or continue combat engagements with the enemy. In exceptional cases artillery fire could be brought to bear on populated areas, but only with the advance approval of the Vietnamese District Chief. Obtaining that approval was likely to require so much time that it was ineffectual in an attack on CAPs.

⁷ The Popular Force soldier is the lowest paid soldier in the Vietnamese Armed Forces. He must augment his pay by working part of the time in or near the hamlet/village where he is located in order to provide the basic living essentials for his family. The Vietnamese District Chief routinely delivers a food supplement from USAID to the PFs.

⁸ CG, III MAF msg 120328Z Sep67.

⁹ Sapper units are units whose capabilities include expertise in breaching (i.e., breaking through) fortified positions.

¹⁰ Examples of the kind of civic action projects routinely undertaken by the CAPs included constructing wells, market places, schools, dispensaries, midwife hospitals, and wash ramps;

¹¹ Establishing trash and human waste disposal points; training local people to perform routine medical services; and arranging visits by physicians and dentists to provide enhanced health care. In some villages there was a significant reduction in disease during the CAPs tenure there.

¹¹ LtCol Miller's rationale and recommendations were set forth in Headquarters, Phu Bai Combined Action Group letter 6/RJK/jkl dated 18 September 1967 (Subject: Reaction Forces for Combined Action Platoons).

Case Study 12: Abu Ghraib

Case Summary: U.S. service members with custody of Iraqi detainees commit a laundry list of abuses against the prisoners, violating all lawful orders, the Geneva and United Nations Conventions, and the trust of their nation.

Discussion Topics: Courage, Integrity, Bearing

Target Audience: NCOs, Company Grade Officers

Purpose: Examine the strategic implications of tactical misconduct. Discuss the requirements for preparing servicemembers to do the right thing “when nobody is looking” and to report misconduct when it occurs. Look for links between the unit’s preparation for their mission and the fallout from the incident.

Discussion Leader Notes:

Table of Contents

Introduction	251
Abuse at Abu Ghraib	252
Aftermath.....	255
Questions for Discussion.....	257
Appendix A: Timeline	260
End Notes	262

List of Figures

Figure 1. Photograph of the hooded man.....	252
Figure 2. Photographs taken at Abu Ghraib Prison.....	254
Figure 3. News of prisoner abuse sparked worldwide outrage.	Error! Bookmark not defined.

Introduction

In January 2004, a Military Police (MP) soldier provided evidence of detainee abuse to an agent of the U.S. Army Criminal Investigation Command (CID). The packet that was slid under the investigator's door contained a number of photographs stored on a compact disk showing soldiers on the night shift of Tier 1 at the Baghdad Central Confinement Facility, also known as the Abu Ghraib Prison, abusing and humiliating detainees. A series of investigations confirmed that abuse of inmates occurred and when the embarrassing photos were made public a firestorm erupted. The impact of the abuse is hard to determine, but it served to rally opposition to the coalition and certainly damaged the international standing of the United States. The sight of soldiers gleefully punching detainees and the degrading acts depicted in the photographs eroded public support at home and abroad. The now famous photograph of the hooded man, standing on a box and hooked to wires, still serves as an icon for opponents to the Global War on Terror. Despite claims that they were simply doing what they were told, several of those who engaged in abusive acts are currently serving sentences of up to ten years of confinement at hard labor. This case study suggests that much can be learned from examining the events at Abu Ghraib. At the time of this writing legal action is still in underway, but much is known about the facts due to investigations released to the public such as the report of the Independent Panel to Review Department of Defense Detention Operations¹ and sworn testimony from a series of courts martial.

A number of themes and questions emerge from this case study of detainee abuse. The first theme considers the ethical risks inherent in situations where there is a significant power difference such as between captors and detainees. The power of the situation and environment as a driver of human behavior is a second theme. A careful reading of the case raises a number of important questions. When there is a lack of clear guidance about procedures to be followed, what principles should be applied to ensure that those in the custody of U.S. forces are treated properly? Does the need for intelligence necessitate the use of degrading or humiliating techniques? What are the responsibilities of Marines who witness an act believed to be degrading, humiliating, or at the far end of the scale, an act of torture? What responsibilities do leaders have to

ensure that Marines act in a manner that warrants the faith and confidence of the American people?



Figure 1. Photograph of the hooded man

Abuse at Abu Ghraib

Detention operations at Abu Ghraib were conducted under conditions characterized by a lack of resources, confusion, and constant threat. Custody of detainees and security of the prison at the time of the abuses was the responsibility of the 372d Military Police Company, a reserve unit from Cumberland Maryland. The company was part of the 300th MP Brigade who had overall responsibility for the detention mission. Although trained and equipped to operate enemy prisoner of war camps, the unit was given responsibility for the custody and control of part of the prison that housed a mix of insurgents, terrorists, criminals, and a number of non-combatants

picked up in large-scale neighborhood sweeps. As the insurgency grew, so did the population of the seventeen detention facilities in Iraq including the one at Abu Ghraib. Some parts of the Baghdad Central Confinement Facility remained under the control of Iraqi prison officials. In October 2003, there were approximately 90 military police at the prison and 7,000 detainees.² Compounding personnel shortages was the fact that the security forces struggling to deal with detainee eruptions inside the facility were also dealing with attacks, including mortar bombardment, on the prison itself.

The deployment of the 800th MP Brigade to Iraq was described by the Independent Panel to Review DoD Detention Operations as "chaotic."³ Unit integrity was often lost during the deployment process, which hampered mobilization training. As a result units arrived out of sequence and without equipment. "While some units overcame these difficulties, the 800th was among the lowest in priority and did not have the capability to overcome the shortfalls it confronted."⁴ The readiness level of the units assigned to the Abu Ghraib prison declined along with discipline and morale.

Developing actionable intelligence is a key element of counter-insurgency efforts, and detainees were potential sources of valuable information. A Joint Interrogation and Debriefing Center was established at the prison to develop intelligence from the detainees. Due to a shortage of trained interrogators and interpreters, intelligence personnel were brought in to man the center from several different units, and they were augmented by civilian contractors.⁵ Other government agencies also conducted their own detention and interrogation operations at the prison, a process that contributed to the abuse and lack of accountability.⁶ At some point the need for custody and control was blurred with the mission of producing intelligence. MPs began inappropriately preparing detainees for interrogators. The International Committee of the Red Cross reported to U.S. officials that inmates were being abused at the Baghdad Central Confinement Facility in the spring of 2003. Specialist (SPC) Charles Graner, Jr., now serving a sentence at the U.S. Disciplinary Barracks at Fort Leavenworth, Kansas, maintained at court martial that he was encouraged to soften up inmates for interrogators; that he was doing what he was expected to do. It is difficult to determine when the abuses began, but the now famous photographs attest to the extent to which discipline broke down on the night shift in Tier 1. The photographs depicted a range of

abuses including the use of military working dogs to terrify inmates, beatings, and a variety of degrading and humiliating acts. In testimony to the House Armed Services Committee, Major General (MG) Taguba testified that "we did not find any evidence of a policy or a direct order given to these soldiers to conduct what they did. I believe that they did it on their own volition."⁷ Whether they responded to cues from intelligence operatives, or took it upon themselves, the actions of a small group had strategic-level impact.



Figure 2. Photographs taken at Abu Ghraib Prison



Figure 3. News of prisoner abuse sparked worldwide outrage.

Aftermath

The extent of abuses of detainees at the Baghdad Central Confinement Facility came to light when twenty-four-year-old SPC Joseph Darby provided information about the abuses to a CID special agent. In addition to the criminal investigation a series of administrative investigations soon followed. Based on the investigations seventeen soldiers were removed from duty including the Commander of the 300th MP Brigade. Additional resources were directed to the facility that significantly improved the physical environment. Secretary of Defense Donald Rumsfeld visited the facility in May 2004. A U.S. Central Command (CENTCOM) spokesman announced in a press conference that an investigation of abuses was underway in January 2004. Although the impact of the photographs was initially underestimated, they burst on the American consciousness after a series of media exposés including a CBS 60 Minutes II episode on 28 April 2004.⁸ A federal judge ordered the public release of the photographs in accordance with the Freedom of Information Act. Today the photographs that the U.S. Government argued would aid al-Qaeda recruitment, weaken the Afghan and Iraqi Governments and

incite riots against U.S. troops, are widely available on the Internet. The first court martial was concluded in May 2004. SPC Charles Graner received the longest sentence of ten years confinement at hard labor, reduction to the lowest enlisted grade, and a bad conduct discharge. The noncommissioned officer in charge of the shift, Staff Sergeant (SSG) Chip Fredricks pled guilty to five charges and received an eight year sentence. The Brigade Commander, Janice Karpinski was reduced to the grade of Colonel (COL), and as of August 2007 trials are still in progress.

Questions for Discussion

1. The unit responsible for the custody mission at Baghdad Central Confinement Facility was chronically short of personnel and resources in the face of a steadily increasing number of detainees. After the extent of the misconduct became known, additional resources were directed to the detention mission.

- What was the responsibility of the leadership of the unit when faced with insufficient or inadequate resources to accomplish the assigned mission?
- While we are expected to do the best we can with what we've got, at what point do we expect leaders to forcefully make the point that a lack of resources threatens mission accomplishment?

2. Fortunately a soldier blew the whistle on abuses at the prison by informing a criminal investigator outside the unit.

- While his actions were proper and commendable, one has to ask why he felt he could not inform his chain of command about the misconduct?
- What can leaders do to establish an environment where Marines are comfortable in bringing evidence of misconduct to the chain of command?

3. The worst abuses at Abu Ghraib Prison took place on the night shift where the soldiers apparently received scant supervision. There is a fine line between trusting subordinates and abdicating responsibility.

- What are the obligations of the various commanders and staffs in ensuring that high risk operations such as detention operations are being performed in accordance with the spirit and intent of laws, rules, and regulations?

4. Several of those accused of abusing detainees asserted at their court martial that they were just following orders or responding to encouragement by intelligence operatives to soften up detainees for interrogation.

- What should Marines do when they receive orders that they perceive to be unlawful?
- Is it ever permissible to engage in torture, humiliating or degrading practices to extract information from detainees?
- Where is the boundary line between acceptable and humiliating, cruel, or degrading?
- Since the lines between authorized and unauthorized interrogation measures are not always clear, what responsibilities do leaders have to ensure Marines stay within acceptable boundaries of practice?
- What is the responsibility of commanders in the oversight of contractors accompanying U.S. forces?

5. There appears to have been a climate within the prison that detainees were less than human. This may have dulled the moral sensibilities of the prison staff and subjected the detainees to greater risk of abuse.

- How do leaders foster an environment where all in U.S. custody are treated in accordance with the Geneva Conventions and other treaties?
- What unique moral questions arise when fighting an enemy that does not adhere to the same rules as those of U.S. forces?
- What should leaders do to, from an ethical standpoint, to ensure that Marines never look back upon their service with shame or embarrassment?

6. In light of the extent of the misconduct on Tier 1, there is a suspicion that others not directly involved in the abuse must have known about it. Medical personnel, for example, treated injuries that were indicative of abuse, yet no reports of abuse were filed until Specialist Darby notified CID.

- What safeguards can be emplaced to ensure that misconduct is reported early and that it will be acted upon quickly?

7. It appears that many involved in the initial investigations failed to realize the impact of the photographs of soldiers abusing inmates.

- How do we raise the awareness of Marines to the potential impact of incidents of misconduct and ensure that such incidents are promptly and fully reported to the appropriate levels?

8. Detention operations are inherently risky from an ethical standpoint. When combined with the morally disorienting nature of combat operations the risk of abuse is compounded.

- What measures should be emplaced to ensure that detainees are not targeted for retribution when in the custody of U.S. forces?
- On the battlefield, at what point does an enemy combatant cease to be a legitimate target and become entitled to the protections in accordance with the Geneva Conventions and UN Convention against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment?

Appendix A: Timeline

2003	
19 Mar	Combat operations begin in Iraq.
24 Nov	Three prisoners are shot and killed in a prison riot at Abu Ghraib.
Apr	The International Red Cross complains to U.S. officials that abuse is ongoing at the Baghdad Central Confinement Facility.
5 Nov	Army Provost Marshal General lists personnel shortages & several policy and training deficiencies in Iraq correctional facilities.
2004	
13 Jan	SPC Darby provides evidence of detainee abuse to an agent of the U.S. Army Criminal Investigation Command (CID).
16 Jan	U.S. CENTCOM announces investigation of abuse.
19 Jan	BG Janis Karpinski relieved of command. LTG Ricardo Sanchez, appoints MG Antonio Taguba to conduct Article 15-6 investigation.
28 Apr	CBS airs photographs of soldiers abusing detainees.
6 May	President Bush apologizes for the abuse of Iraqi prisoners.
7 May	Donald Rumsfeld testifies before congressional committee. PFC England charged with conspiracy assaulting detainees.
11 May	MG Taguba testifies before Congress that key factors included a discipline, training, supervision, leadership. A militant website posts streaming video of the beheading of an American claiming it was in response to the abuse of Iraqi detainees.
19 May	SPC Sivits pleads guilty to mistreating detainees and dereliction of duty. He is sentence to one year of confinement, a bad conduct discharge, and reduction in rank.
24 Aug	The Schlesinger Report is released.

11 Sep	SPC Armin J. Cruz sentenced to eight months in prison after pleading guilty to abusing inmates at Abu Ghraib.
2005	
14 Jan	SPC Charles Graner, Jr. is sentenced to ten years confinement at hard labor.
18 Feb	The ACLU releases photos taken at Abu Ghraib.
26 Sep	PFC England convicted of conspiracy, maltreating detainees and committing an indecent act. She receives a three-year sentence.
22 Mar	Dog handler SGT Michael J. Smith is sentenced to six months confinement for using his military working dog to scare detainees.
2 Jun	Dog handler SGT Cardona is sentence to ninety days hard labor without confinement and a reduction in rank for dereliction of duty and unlawfully threatening a detainee with his dog.
2007	
30 Jan	LTC Steven Jordan is arraigned on eight charges stemming from abuse at the Baghdad Central Confinement Facility.

End Notes

¹ James R. Schlesinger, et al. 2004. *Final Report of the Independent Panel to Review DoD Detention Operations*. www.defenselink.mil/news/Aug2004/d20040824finalreport.pdf [accessed 21 August 2007].

² Steven Strasser, *The Abu Ghraib Investigations*, (New York: Public Affairs), ed. 2004.

³ Schlesinger, et al., p. 12.

⁴ Ibid.

⁵ Strasser, 71. See also Steven L. Schooner 2005. "Contractor Atrocities at Abu Ghraib: Compromised Accountability in a Streamlined, Outsourced Government," *Stanford Law and Policy Review* 16 (2), p. 549-572. Almost half of the interrogators at Abu Ghraib were civilian contractors.

⁶ Ibid. , 75, 111.

⁷ The transcript of Major General Taguba's 11 May 2004 testimony to the Senate Armed Services committee was reprinted in the Washington Post and is available at <http://www.washingtonpost.com/wp-dyn/articles/A17812-2004May11.html> [accessed 22 August 2007].

⁸ As an example, see Seymour Hersh, "Torture at Abu Ghraib," *The New Yorker* 10 May 2004 available at http://www.newyorker.com/archive/2004/05/10/040510fa_fact [Accessed 22 August 2007]. CBS News aired the first photographs from Abu Ghraib during a 60 Minutes II episode on 28 April 2004.

Case Study 13: Interdiction in Afghanistan

Case Summary: A team of Navy SEALs is in danger. The team must use lethal force to ensure their safety, or use restraint to ensure the safety of strangers who may be their enemies. (This is a slightly fictionalized account of an event that actually took place, developed specifically for case study analysis.)

Discussion Topics: Judgment, Courage, Endurance

Target Audience: NCOs, Company Grade Officers

Purpose: The purpose of this study is to get the reader to focus the ideas of leadership, ethics, integrity, duty, and Law of Armed Conflict when analyzing a combat situation. This case study is typical of the problems that arise during a combat operation. It demonstrates the problems that commanders face when planning missions, such as uncertainty and time constraints. It shows how situations can change rapidly and how even the most detailed intelligence can be wrong. This case study also addresses the ethical and psychological factors that commanders must address during, before, and after a mission.

When reading this case, attempt to identify and address the issues that arise during the planning, decision, and execution phases of the mission. Also address the issues and conflicts that can and do arise during joint operations. Keep in mind any possible solutions to these problems.

Developed by: Captain Bob Schoultz, USN (Ret)

Discussion Leader Notes:

Table of Contents

Introduction	265
March 2002: The Mission	265
Concerns	266
Planning	267
Guidance	269
Final Steps	270
Infiltration.....	271
On Target	273
The Chase.....	274
Decision Point	275
Instructors Guide	277
Questions for Discussion.....	279

Introduction

This is a fictionalized case study centered on an incident that actually happened. In March 2002, the Joint Special Operations Task Force (JSOTF) was tasked with interdicting suspected Taliban and Al-Qaeda convoy attempting to flee from Afghanistan into Pakistan. The purpose of the mission was to capture if possible, or kill if necessary, suspected terrorist leaders in the convoy in order to obtain intelligence. A joint special operations force of U.S. Navy SEALs and U.S. Army CH-47s were assigned to execute the mission. Overall command, planning, and execution of the mission was given to Navy SEAL Lieutenant Commander (LCDR) Tom Reynolds.

The nature of this mission caused many dilemmas for LCDR Reynolds. The nature of the mission meant the Reynolds had little to prepare. Reynolds and his team were authorized to use any necessary force to stop or neutralize the convoy, but it was preferred that they brought back live prisoners. The Taliban and Al-Qaeda fighters in theater were known to resist capture. Therefore LCDR Reynolds had to consider protecting his own men versus attempting to capture the terrorists alive.

March 2002: The Mission

As LCDR Tom Reynolds opened the blackout doors at the JSOTF, Afghanistan Headquarters, the fluorescent light hammered his dark-adjusted eyes. Following dinner, Reynolds had lingered outside the chow tent, where he talked with some of the other officers on the JSOTF staff and enjoyed the rare break from the cold March rains. Reynolds searched through squinted eyes for the JSOTF Operations Officer, Lieutenant Colonel (LTC) Thompson. Across the crowded room, a lone figure waived a sheaf of papers at Reynolds.

LTC Thompson handed LCDR Reynolds an intelligence report and a copy of an email that had just arrived from the Operations Officer of the Land Forces Component Commander (LFCC). The email directed the JSOTF Commander to provide a concept of operations for interdicting a vehicle convoy of Al Qaeda and Taliban terrorists that was expected to be moving down a road about seventy miles to the south the next morning sometime after 0730, apparently trying to escape Afghanistan into Pakistan. It was believed that the convoy might include some key Taliban or Al Qaeda leadership.

In two hours, LFCC expected a mission concept that included JSOTF's estimate of its ability to conduct the mission successfully, what support JSOTF required, and what conflicts the mission would cause to other ongoing operations. LTC Thompson had already contacted Major (MAJ) Mark Wyatt, the executive officer (XO) of the Army CH-47 Helicopter squadron who would be over momentarily to look at the mission with Reynolds and his men. The mission was to interdict the convoy, and to capture if possible, or kill if necessary; any suspected members of Al Qaeda or Taliban they might encounter.

Concerns

LCDR Reynolds knew he had limited time to plan and rehearse with his team. His SEALs had become accustomed to tight timelines, but were all fully aware of the increased risk they assumed when they had little time to prepare. A tight timeline meant less time to consider and plan for the numerous "what ifs," to carefully check the intelligence and to make sure that everyone knew the plan and its various branches and sequels.

Two recent tragedies could at least in part be attributed to a very abbreviated planning and rehearsal timeline. In a recent high-stakes operation, a SEAL reconnaissance team had been ambushed upon insertion by Al Qaeda forces who had gone undetected during the pre-mission reconnaissance. The team had been surprised, and two of their teammates and number of US Army Rangers had been killed under relentless enemy fire. These deaths were fresh in the SEALs minds; they had only steeled the SEALs' resolve to do whatever it took to find and kill the terrorists. But the enemy was not to be underestimated. LCDR Reynolds and his men knew that their planning must be thorough, and in short-fused missions, Reynolds and his men were forced to weigh the trade off between the opportunities presented by late-breaking intelligence and the increased risk of a short planning cycle.

Two days earlier, rapid planning and quick response to late-breaking intelligence had led to another, different type of tragedy. LCDR Reynolds and his team had seen first hand the horrible consequences that can come from fast-paced operations and decisions made with inadequate intelligence. Several days earlier, overhead

surveillance had recorded the presence of armed men around a walled compound; corroborating intelligence had indicated that this compound would be used for a meeting of high-level Taliban officials. A precision-guided missile was launched and struck the main building of the compound when the meeting was scheduled to take place. Reynolds and his men had been sent into the compound minutes after the missile struck to gather any remaining intelligence, capture and treat any survivors, and determine whether any of the dead or wounded were key Taliban or Al Qaeda leaders. When they arrived, they found all those killed had been non-combatants – farmers and their families who were living in the compound. The weapons they were found were personal firearms that virtually all rural Afghans carried for self-protection. Reynolds and his men were shaken by the gruesome results of this miscalculation: elderly people, farmers, women and children now dead, with no apparent connection to the enemy. After determining that there was no exploitable intelligence on the target, he and his men returned to base and reported to his superiors what had happened, including his dismay at the mistake.

Reynolds then refocused his efforts on his next mission. Part of preparing for the next mission involved dealing with the psychological effects of this one; he contacted the chaplain, told him what had happened, and asked him to talk to the men. Afterward, he knew that having the chaplain meet with them had made a difference, to some of the men more than others, but it felt like the right thing to have done after witnessing, and in a sense participating in, the tragic consequences of a mistake in war.

Planning

After receiving the mission to interdict the convoy from LTC Thompson, LCDR Reynolds knew what to do and started going into his mission planning routine, which had become almost automatic. He was the mission commander; MAJ Wyatt and the CH-47s would operate under his tactical command. This was just like the countless exercises he'd conducted, and similar to many of the missions he'd recently conducted during this war. The years of training were paying off. His team was gelling into the type of unit that he and every other military officer wants to lead: they only needed to be pointed in the right direction, with a good mission concept and clear commander's

intent. The plan and preparation just seemed to come together. If everything went as planned and as rehearsed, his role in the execution would be minimal; communicate with higher headquarters and keep the squad leaders informed about any new developments, and let the squad leaders execute the plan. But of course, nothing ever goes exactly as planned, and it would be his job to make immediate adjustments to whatever unforeseen circumstances they would find, and understand the ripple effect that changes to the plan inevitably caused. That was what he got paid to do.

Intelligence indicated that ongoing allied operations were putting significant pressure on Al Qaeda and Taliban forces in Southeast Afghanistan. This increasing pressure was making local Al Qaeda and Taliban movement and operations more and more difficult. The mission was derived from an intelligence tip that a group of Taliban or Al Qaeda leaders, with a group of their armed supporters, would be attempting to escape into Pakistan by vehicle soon after first light the following day. The enemy had already realized that allied aircraft routinely and easily targeted vehicles moving at night; consequently, the terrorists were now seeking to blend in with the normal daylight traffic on the roads. It appeared that Taliban and Al Qaeda were having some success at escaping into Pakistan, blending in with the stream of refugees coming out of Afghanistan.

The intelligence indicated that a convoy of three vehicles would be leaving a particular village the next morning and moving toward Pakistan. The vehicles would be sport utility vehicles (SUVs) of the Toyota Land Cruiser type and/or compact pick-up trucks full of people traveling south on the one local road leading to Pakistan. Intelligence sources indicated that the terrorists normally put heavily armed men in lead vehicles as a reconnaissance element, while the leadership with their personal guards would follow some distance behind, maintaining communications with the lead vehicles about any difficulties encountered. Also, and particularly worrisome, were the indicators that the terrorists were probably carrying man-portable air-defense systems, specifically, Soviet-era SA-7 shoulder-fired missiles, which are particularly effective against helicopters, during daylight hours.

In short order, the SEAL team had worked out a plan with MAJ Wyatt and his team. Also the intelligence planners had coordinated by providing the requested

overhead surveillance: Navy P-3 aircraft would be watching the road, in order to find and track the targeted vehicles. A very difficult part of the mission was to interdict the convoy in such a way as to achieve complete surprise, while still offering the opportunity for the occupants of the vehicles to surrender, all without putting his own men at undue risk. "Capture if possible, kill if necessary" is always tricky, and requires some clear indicator of hostile intent, but also an intuitive sense of threat and a split second decision. Capturing the occupants would be a great coup. LCDR Reynolds and his men knew that the key to unraveling the terrorist network in Afghanistan was intelligence, and the people in this convoy represented a potential gold mine of intelligence. The SEALs would capture them if they could, but if the terrorists resisted with lethal force, the SEALs would shoot to kill.

Guidance

LCDR Reynolds met with Colonel (COL) Smith, the JSOTF Commander, to discuss Smith's perspective and solicit any additional instructions he might have for this mission. With the tragedy of the recent mission still on his mind, Reynolds also wanted to know about the fidelity of the intelligence and any updates to the Rules of Engagement (ROEs). COL Smith replied that he understood the intelligence to be quite reliable, and that the ROEs hadn't changed. If the vehicles they encountered demonstrated hostile intent by displaying or firing weapons, the SEALs should regard them as legitimate targets. COL Smith believed that higher headquarters chose to employ SEALs rather than precision-guided munitions for this mission out of a desire to avoid the mistake of two days ago. That said, he reminded Reynolds to employ tactics that would enable him to bring back prisoners, without taking undue risk. COL Smith reiterated to LCDR Reynolds that the ROEs gave him all the guidance he needed.

That was what Reynolds wanted to hear. He felt the ROEs as they stood made sense, and gave him and his team the latitude to exercise their professional judgment to complete the mission and stay alive. Vital to their success was an ability to rapidly assess hostile intent in a fast-moving tactical environment; to that end, they had discussed and rehearsed a wide variety of situations many times. He and his men knew the value of prisoners, but they also knew the value of aggressiveness and

firepower in a gunfight. Their mission success depended on “Surprise, Speed, and Violence of Action,” yet they had recently witnessed the tragic results of this motto’s application when it was not tempered by good judgment.

Final Steps

The plan came together quickly - it had to. MAJ Wyatt would be the lead helicopter (helo) pilot for this mission, and LCDR Reynolds would be in his helo. The mission required three helos, referred to as Chalk One, with MAJ Wyatt and LCDR Reynolds. Chalks Two and Three would ride aboard the other two helos, and be led by LCDR Reynolds’ Assistant Officer in Charge and Platoon Chief respectively. They talked through the contingencies with the pilots and studied the map, while the intelligence section coordinated with the P-3 crews flying the overhead surveillance mission.

The plan they developed was simple and made sense, and at any rate, there was little time to debate it. It was submitted for and quickly received approval. The plan had them taking off at 0645 the next morning and flying to a point near the road where they would loiter at a low altitude, visually and audibly sheltered from the road by the mountains, waiting for a cue from the P-3 crew watching the road. When the P-3 crew saw what appeared to be the convoy, it would notify the SEALs and vector them to it. The helos would then move in under the cover of the mountains and surprise the convoy, quickly determine whether to take the vehicles under fire, or if in doubt, land and put the SEALs on the ground, and let the SEALs make the final determination. The helos would be available to provide cover fire or extraction, as required. Everyone was very aware of the helicopters’ vulnerability. An SA-7 missile, in the hands of a reasonably proficient operator, could spell disaster. In daylight, helos are also easy prey to small arms fire from the most primitive weapons – bullets from an AK-47 assault rifle can puncture the helo’s thin aluminum skin, wreaking havoc on the aircraft as well as its crew and passengers. Indeed, a couple of lucky shots from an AK-47 could ruin their whole day.

Infiltration

Early the next morning, all went as planned. LCDR Reynolds even got a couple of hours of sleep prior to his 0530 pre-launch meeting with his squad leaders and the helo pilots. The SEALs boarded the three CH-47s and after the pilots had checked out their aircraft and established communications with the P-3, they took off and headed for the designated loiter point. Forty minutes later, they arrived at the loiter point, again checked in with the P-3, and began flying in low, slow circles, far enough away from the road so as not to be heard, yet close enough to respond quickly when called by the P-3.

Reynolds had been through this drill many times before. Sitting in the helo, with the head-set on, partially listening to the relaxed banter of the pilots, he was lost in his own thoughts with the muffled hum and shake of the helo in the background of his awareness. While waiting for the call, he mentally walked through the plan for the operation and its various contingencies: how they would make their approach to the convoy, how quickly they would have to determine threat level and response. How far back would the trail vehicle be with the so-called leaders? Would they stumble upon one of the key leaders of the Taliban or Al Qaeda? Did they really have SA-7s?

He pushed from his mind what would happen if the bad guys could get off a shot at the helos with an SA-7 before they could be neutralized. Worrying about it wouldn't do anything. He knew the pilots were very concerned as well; they had discussed it during the planning. But LCDR Reynolds also knew they had a lot going for them on this operation - the confidence and skill that comes from extensive training and experience. In order for the mission to be successful and the men to survive surprise, speed, and violence of action were the key.

Approximately twenty minutes after arriving at the loitering point, Reynolds heard on the head-set that the P-3 had spotted what appeared to be the target convoy: two pick-up trucks traveling together, followed about a mile back by another pick-up truck. It would be about twenty minutes before the vehicles reached that section of the road where LCDR Reynolds and the helo pilots had determined that the terrain gave them the greatest advantage for surprise and the bad guys the least opportunities for escape, on vehicle or on foot. After discussing it briefly with MAJ Wyatt, Reynolds told the SEAL

Leading Petty Officer (LPO) in his helo what he had just heard, and the LPO alerted the rest of the SEALs.

The SEALs came alive. Up to that point, they had been sitting in the back with their eyes closed, some dozing lightly, others rehearsing the mission in their heads, while a few thought of things completely unrelated to this operation. But now all the men were alert and focused, checking their gear one more time, adjusting their positions for rapid exit from the helos.

MAJ Wyatt continued to get information from the P-3's crew. The convoy was continuing down the road toward the interdiction point. After about ten minutes, the P-3 crew advised MAJ Wyatt that it was time to leave the loiter position and begin moving toward the road. Reynolds advised his LPO, who passed it on to the SEALs in back of the helo.

As the helos approached the interdiction point, they stayed very low to the ground, flying at about fifty feet, to minimize the chances that the "wop, wop, wop" of their approach would traverse the ridge and alert the convoy. At about two minutes out, the P3 passed on some disturbing news. "We've lost the trail vehicle. We haven't seen it for several minutes - last we saw it was about three miles back. It might be masked by the mountains between us and them. But two vehicles are on final into your target zone and will be there in a couple of minutes."

"Damn!" Reynolds thought, for now it was quick decision time. The plan had been for Chalk One to break off from Chalks Two and Three in the last twenty seconds, and to go to the trail vehicle, to permit a simultaneous hit on the lead and trail vehicles. The trail vehicle was where the valuable targets would be--- the leaders. LCDR Reynolds quickly considered the possibility of his helo flying alone thru the mountains searching for the trail vehicle while Chalks Two and Three were taking care of the lead vehicles. There was no telling where that vehicle could be or what it could be doing. Even though the primary target was the leadership in the trail vehicle, with this new uncertainty, Reynolds did not want to take off on a potential wild goose chase, splitting his force, now that the location of the primary target was uncertain.

He told MAJ Wyatt he wanted to keep all three helos together until they had a better idea what they were up against, or at least until the P-3 found the third vehicle.

Major Wyatt concurred, and told the pilots of Chalks Two and Three that the plan had changed and that they would stay together and all hit the lead vehicles. They then started their climb up and over the final hill that lay between them and the road, and presumably the two lead vehicles. Reynolds ensured that the word was passed to the SEALs in Chalks Two and Three. Everyone in the helos was on full alert, the pilots and crew calmly passing information back and forth, the SEALs on their feet, looking out the windows, weapons at the ready, on safe.

On Target

As they popped over the summit of the hill, they saw two pick-up trucks approaching from the north, about five hundred feet below them and to the left. LCDR Reynolds suddenly experienced a familiar jolt of adrenaline resulting from stress, excitement, responsibility and total focus. The helos crested the hill, heading down low and fast toward the vehicles in a counter-clockwise arc. Reynolds stared intently at the occupants in the back of the pick-up trucks, looking for any sign of hostile intent. First the front vehicle, and then the rear vehicle stopped when they saw and heard the helos. He saw men get out and begin running. Then Reynolds thought he saw weapons and muzzle flashes. He looked over the shoulder of the left door gunner, who also saw the weapons and muzzle flashes, and immediately opened up on the lead vehicle with his mini-gun, shifting to the second vehicle as soon as he could get a good shot at it. At about that time, the second helo picked up the lead vehicle and started cutting it to pieces. Reynolds saw more muzzle flashes, and then saw men fall. There was no sign of anyone setting up to fire an SA-7. The helos passed the vehicles flying fast and low, and putting out a huge volume of fire. The two pick-up trucks were being cut to pieces, and men still in the vehicles were being chewed up with them. Those who had left the trucks were scrambling in chaos and disorder, some firing at the helos, several of them falling victim to the withering fire coming from the door gunners. LCDR Reynolds saw that this part was going well. Now, where was the trail vehicle with the leadership?

As his helo was turning to circle the vehicles and make an approach from the other side, Reynolds felt that Chalks Two and Three could handle this. He said to MAJ

Wyatt on the headset, "Mark, I think they've got this under control. Let's go find the trail vehicle. What do you think?"

"Roger," he responded. "I'll advise Chalk Two to take control here." Reynolds watched as Wyatt departed the formation in an abrupt climb. The P-3 had just called to tell them that it still had no sign of the third vehicle; MAJ Wyatt briefed the P-3 crew of Chalk One's new plan, and piloted the big helicopter along the road traveled by the two pickups they'd just destroyed.

The Chase

LCDR Reynolds called his LPO up to him. The LPO took off his headset and Reynolds yelled over noise of the helo to tell him what they were doing. The LPO nodded and went to the back of the helo to tell the other SEALs who stared at him in anticipation. Reynolds moved to the door gunner on the right side of the aircraft to get a view of the road.

The longer it took to find the vehicle, the greater the risk. They had to assume the trail vehicle had heard the helos and the gunfire, and perhaps even had radio communication from the lead vehicles. That gave the bad guys plenty of time to set up an ambush for the helo - they would certainly be expecting them. These were the leaders, and with them were the most devoted soldiers and probably the best weapons. The right door gunner had not expended any ammunition on the assault on the other two vehicles - he was keyed up, ready, and had a full load of ammo.

The CH-47 flew down the narrow valley hugging the road, through an eternity of silence on the crews' headsets. The pilots, crew, and Reynolds knew they were most vulnerable here. In addition to being good, they now needed to be lucky .

As the CH-47 turned a corner in the valley, all eyes aboard turned to look up a narrow canyon. Reynolds saw the pick-up truck just as he heard Major Wyatt's monotone: "There they are." What looked like a truck full of people was stopped on the side of the road about two hundred yards ahead to the right. With a clear shot, the door gunner quickly brought his mini-gun to bear.

Decision Point

LCDR Reynolds sensed it didn't fit: they spotted the truck and were spotted; the door gunner swung the mini-gun's muzzle towards the truck. MAJ Wyatt identified the target and...

Nobody ran.

Reynolds thought he saw a woman in the truck hold something up high as if to display it to the helo. "NO!" He grabbed the door gunner and held his fist in front of the man's face in a desperate gesture. The confused door gunner followed Reynolds' lead and held fire. The helo continued toward the truck, low and fast as Reynolds looked hard for signs of hostile intent. In the two long seconds it took to reach and pass the truck, they noticed that this was different from the other vehicles. No one left the truck. No one ran for cover. It was hard to tell whether these people were armed or not, given the speed and approach angle of the helo. The helo sped past the truck so close that the people in the bed of the truck were ducking from the rotor wash, and Reynolds saw that he had been right. It had been a woman he'd seen – she was holding up what appeared to be a baby. He didn't see any weapons yet or any display of hostile intent. That didn't mean they weren't bad guys, and that they weren't a threat. LCDR Reynolds told Major Wyatt to circle and land in front of the vehicle, far enough away to be safe, but close enough for the SEALs to quickly surround the vehicle and take appropriate action.

After speeding by the vehicle, MAJ Wyatt exhaled. When he didn't hear the door gunner firing, he feared the weapon had jammed and that they were about to lose a gunfight. He flew the CH-47 at full throttle farther down the road, rounded a bend in the road, and then ascended to crest a hill and return to a position several hundred yards in front of the vehicle. He was ever mindful of the possibility that an SA-7 was being prepared for the first clear shot. LCDR Reynolds dashed back to his LPO and told him that the SEALs would debark and move in to observe the vehicle - it wasn't clear if these were hostiles. He then moved back to the front of the helo so that he could orient himself prior to landing.

The helo flared and landed fast. Reynolds and his SEALs sprinted from their helo and set up a hasty perimeter in the nearest cover beyond the helo's rotor wash.

The CH-47 lifted off the ground, turned 180 degrees away from the direction of the vehicle, and took off. The SEALs patrolled to the vicinity of the pick-up truck and observed the passengers who, sensing the danger they were in, had wisely chosen to remain perfectly still. As the SEALs approached the pick-up truck, Reynolds signaled to its passengers to climb down from and move away from the truck. His SEALs searched the pick-up truck and its passengers, and determined that they were not Taliban or Al Qaeda leadership, nor was there any evidence that they had any connection to them. Either the intelligence had been wrong about the three-vehicle convoy, or the situation had changed since the source had reported it.

It didn't matter. These people did not fit the profile of Taliban or Al Qaeda. They just happened to be in the wrong place at the wrong time. LCDR Reynolds realized that he had narrowly avoided making a tragic mistake. He was still worried about a possible trail vehicle, and called MAJ Wyatt to ask him if he had any other information. Wyatt had been in touch with the P-3, and had flown his CH-47 higher in an attempt to spot other vehicles, but could see none. Reynolds got on the radio with the SEALs who were on the ground at the site of the two lead vehicles. They had already debarked from the helos, taken control of the site with no resistance, and were inspecting the dead and wounded. All were males and had been carrying arms. Eight were dead, and the three wounded were being treated. They had taken two unscathed prisoners, who had survived the initial assault and had stood with their hands raised when the SEALs approached. This was all good news.

Now Reynolds had to deal with the non-combatants he had in his control, and get his team back together. At his direction, his LPO ordered the civilians to sit down. They obediently remained, motionless, as MAJ Wyatt extracted the SEALs from the zone and reunited them with their team mates.

Instructors Guide

While the case study as written is a slightly fictionalized account of an event that actually took place, the below conversation is entirely fictional. It is provided to help the instructor frame the issues that should come up in a discussion of this case study. The discussion should focus on an officer's challenge in balancing his obligations to fulfill his mission, protect his troops, and protect non-combatants.

COL Smith, the JSOTF Commander had heard that his helo pilots believed that LCDR Reynolds had taken undue risk during an operation from which they had just returned, causing some tension between the SEALs and Army helo crews. COL Smith had heard what had happened and was familiar with the events of the operation, but knew he needed to get the story directly from his two commanders. He called MAJ Wyatt and LCDR Reynolds to his office to get the issues out on the table. After COL Smith indicated that he understood that there was some disagreement about how the operation's execution, an emotional MAJ Wyatt responded immediately.

"Sir, we could have been killed, and lost the bird -- we were sitting ducks. We're real lucky Tom was right, because if he'd been wrong, we would have a lot of dead Americans and this whole war would look a lot different right now." MAJ Wyatt stepped back and exhaled carefully.

COL Smith looked at LCDR Reynolds.

"Sir, he's right - we could have all been killed - if I'd been wrong. But I wasn't. I was in charge. And I was right. I made the call based on what I saw, and what I sensed, and I stand by it. It was clearly the right thing to do. We knew we were at risk, but we still have to do the right thing."

MAJ Wyatt jumped on him. "Right Tom, but all the indicators were there that these were bad guys, and you didn't KNOW, and my guys and yours were sitting ducks for several seconds, and that put not only all of us, but potentially the whole focus of everything we're doing here at risk. Can you imagine what this task force would be doing right now if those had been bad guys and we had taken an SA-7 right down the throat? I don't want to kill innocent people either, but if you had been wrong, nobody, I mean NOBODY, would forgive you. And we'd all be dead."

“Mark - it just didn’t feel right - and, we saw no hostile intent.”

“We didn’t have time to see hostile intent, Tom! When we took off after that third vehicle, my understanding was that we were going hunting. We knew we had flushed the bad guys, and at that point, we were in a gunfight. When we came around that bend in the road, it was either them or us. When you stopped my gunner, I figured it was us. I expected a flash and whoosh and then lights out.”

“You two calm down and come back and see me when you get your stuff squared away,” interrupted COL Smith. He knew that he was the one who had to take responsibility for risk, and if there was something unclear about risk, he needed to resolve it. “I’m going to have to think about this. Get out of here and get some rest. We’ve got a bunch of other things hopping and we’ll need you to be focused.”

MAJ Wyatt and LCDR Reynolds left the colonel’s office and agreed to get together in a couple of hours after they had taken care of their men, their gear, and sorted out the other details from their mission. MAJ Wyatt walked away, fists balled, to rejoin the other pilots.

As Reynolds walked back to where his men were working, he thought about what his friend Mark Wyatt had said. He had gambled and won, but he had bet the whole farm. Not just *his* farm, but everybody’s, as well as the future capability of the Special Operations Task Force. He’d be forced to make this gamble again and again. His mission, his commander’s intent, and his own sense of what he is fighting for require that he do whatever he can to avoid killing non-combatants. At the same time, however, he is responsible to do everything possible within the dictates of his mission to bring his men home unharmed to their wives, children, and parents. He also reflects on the memories of the shattered remains of innocents who had been in the wrong place at the wrong time. Erring to either side could have unthinkable results.

Questions for Discussion

1. LCDR Reynolds was selected to lead, plan, and execute the mission. LTC Thomson personally briefed him on the mission perimeters and rules of engagement. It was understood that the key of this mission was the capture of Al-Qaeda or Taliban terrorist leadership but it was also recognized that no American lives should be sacrificed when doing so; therefore the order “capture if possible, kill if necessary” was issued.

- What dilemmas did LCDR Reynolds face in planning this mission?
- How could have LCDR Reynolds better planned and organized his mission in the time allotted?

2. During the execution phase of the mission the P-3 Orion surveillance aircraft lost track of one of the vehicles in the convoy. Reynolds made a split second decision to change plans.

- The original plan called for LCDR Reynolds and his Chalk (Chalk One) to strike the third vehicle while Chalks Two and Three would strike the first two. When the plan was changed all chalks hit the two known vehicles – could LCDR Reynolds plan been executed better? If so, how?
- How did Reynolds’s new plan affect the outcome of the mission?

3. After the first two threats were neutralized, LCDR Reynolds and his chalk searched for the convoy’s last vehicle. When they happened upon a vehicle, Reynolds’ instincts told him something was not right; he stopped the door gunner from firing. Although engaged in a firefight moments before with the two previous vehicles, LCDR Reynolds prevented the CH-47 gunner from firing on the third vehicle they found. His judgment and gut instincts told him that it was better for the team to check out the situation then to fire.

- Was LCDR Reynolds justified in his actions or did he endanger his men and the helicopter’s crew?
- If LCDR Reynolds had not witnessed or known of the two traumatic events (the ambushed SEAL and Ranger teams and the bad intelligence which lead to the death of non-combatants) how would his mission have been executed differently?

- In what other ways could LCDR Reynolds and Chalk One have utilized the P-3 surveillance plane?
- On closer examination of the vehicle LCDR Reynolds and his team identified a truck full of people which had a woman holding up a baby. He and his men then debarked for a closer look. Should he have discounted the woman with a child as non-hostile or could she have still have been a threat?

4. During the mission debrief, MAJ Wyatt sharply criticized LCDR Reynolds' leadership of the operation. It was MAJ Wyatt's belief that the door gunners should have suppressed the area with fire. He believed that LCDR Reynolds endangered his crew and the entire SEAL team when ordered the door gunner to hold fire.

- Was LCDR Reynolds justified in his actions?
- Did MAJ Wyatt have a valid reason for his comments and concerns?
- Under the circumstances did MAJ Wyatt's gunners have a valid and justifiable reason to shoot?
- How would LCDR Reynolds's actions affect his relationship with MAJ Wyatt?
- What could have LTC Thompson done to remedy the situation?
- How could this situation affect future operations and relationships within the JSOTF?

Case Study 14: Incident at Shkin

Case Summary: A Joint Special Operations Task Force tasked with observing a housing compound in Afghanistan must balance a hasty plan, their warfighting techniques and the need for restraint.

Discussion Topics: Judgment, Decisiveness, Knowledge

Target Audience: NCOs, Company Grade Officers

Purpose: When reading this case study attempt to identify and address the issues that arise during the planning, decision, and execution phases of the mission. Take note of the dilemmas that the special forces operators face during the mission. Also address the issues and conflicts that can and do arise during joint operations. Keep in mind any possible solutions to these problems

Developed by: Captain Bob Schoultz, USN (Ret)

Discussion Leader Notes:

Table of Contents

Introduction	283
The Operation	283
Observation	284
Command Concerns	285
Planning an Assault.....	285
Executing the Assault.....	286
Operational Concerns	289
Post Operational Analysis	290
Questions for Discussion.....	291
End Notes	292

Introduction

Their mission was to confirm or deny the presence of Taliban or Al Qaeda leadership and prepare to raid the compound. The Special Forces (SF) had been sent in to observe a compound near the village of Shkin after a Predator Unmanned Aerial Vehicle (UAV) detected a full day of suspicious activity at the compound. But the SF soldiers, like the Predator, were unable to tell just what was happening in the compound. Captain (CPT) Smith, the team leader of the Special Forces soldiers on the site, saw what appeared to be Al Qaeda and Taliban soldiers, but could not confirm the presence of senior leaders. They had observed armed patrols leaving the compound, moving around the perimeter and then re-entering the compound. They had also observed other activity indicative of a 'military' presence – an armed sentry inside the compound and at least one gathering of armed men in what appeared to be some type of formation. The roof-mounted microwave antennae and mast-mounted antennae in the compound were other indicators that this was not the standard Afghani farmer's compound, housing a large extended family. So they waited and watched.

Intelligence indicated this old compound was more than a mere outpost for Taliban or Al Qaeda; it had the potential of offering up some key Taliban or Al Qaeda leaders. Earlier reports had indicated that it had been used as a meeting place for high level leadership, and being only seven and a half kilometers from the Pakistani border, it was a very convenient staging area for equipment and men, entering and leaving Afghanistan through Pakistan. At one point, intelligence indicated that Osama bin Laden had been scheduled to meet with his doctor there, but the intelligence was determined to be unreliable. It was, however, clear that the compound merited close observation.

The Operation

After a Predator UAV observed suspicious activity at a compound near the village of Shkin, Special Forces were sent there to confirm or deny the presence of Taliban and/or Al Qaeda leadership and to prepare to raid the compound. Even with

the intelligence collected through various sources and the images obtained by the Predator, the presence of enemy leadership could not be confirmed. The SF team was unable to see inside the compound; they were forced to settle for observation of the periphery. CPT Smith, the SF team leader, had confirmed the possible presence of what appeared to be Al Qaeda and or Taliban soldiers, but had not yet seen signs of combatant leadership. The team had observed armed patrols exiting and then re-entering the compound after patrolling the perimeter. This had been observed along with other activity indicative of a military presence: an armed sentry inside the compound; and the gathering of armed men in what appeared to be troop formations. The roof-mounted microwave antennae and mast-mounted antennae in the compound further suggested this was not simply a dwelling for a large family. The SF team decided to wait and watch.

Previous intelligence reports indicated the compound had been used as a meeting place by senior leaders in the past. As it was, only seven and a half kilometers from the Pakistani border, it could also be used as a convenient staging area for equipment and men entering and leaving Afghanistan through Pakistan. Unreliable but tantalizing reports indicated Osama bin Laden once scheduled to meet his doctor at the compound. Regardless, the compound was a potentially significant Taliban/Al Qaeda outpost.

Observation

Previous reports of regular vehicular traffic coming into the village of Shkin from the border with Pakistan had aroused curiosity at SF command. Early on the night of 13 January, after several days on site, CPT Smith and his team observed something unusual, and reported it immediately. On this particular night, the team observed a single vehicle leave the compound, move to the Pakistani border, and flash its lights. In the clear mountain air, the SF team easily counted the headlights of twelve vehicles moving down the steep mountain roads from the border to the compound. Several of these vehicles remained at the target site, while others dispersed in and around Shkin. CPT Smith watched carefully for any other unusual activity but the scarcity of light made the effort difficult from two kilometers away, even with night observation devices.

Unbeknownst to CPT Smith, his report of this unusual activity had received close attention back at Central Command (CENTCOM) in Florida, where staff officers decided to take the initiative.

Command Concerns

CPT Smith's commanding officer (CO) was Navy SEAL Captain (CAPT) Hansen. Hansen was in charge of the Joint Special Operations Task Force (JSOTF), located in Qandahar, which had responsibility for special operations support in southern Afghanistan. CAPT Hansen was aware of the potential importance of CPT Smith's report, but was surprised to receive a call from CENTCOM only after getting the report himself. CENTCOM wanted to move immediately; they informed Hansen's staff that CENTCOM has dispatched a B-1 bomber with precision-guided munitions to strike the compound in two hours. The CENTCOM planners asked CAPT Hansen how soon after the strike he could put a team on target to exploit its intelligence value.

Planning an Assault

CAPT Hansen and his key staff and commanders quickly determined that they could have a team on target a few hours after the strike. The short notice and great distance from their base to the target made the operation difficult and risky. Hansen would have to redirect forces already planning or conducting other assigned missions to prepare for this mission in haste. CAPT Hansen and his staff remained unconvinced this new intelligence warranted the action prescribed. He knew from the reports that numerous noncombatants lived in the compound; while he also suspected the vehicles reported by CPT Smith could be very significant, there was little substantial evidence of who or what was involved.

Also, he was fairly certain there was no large concentration of vehicles at the Shkin compound as the CENTCOM staffers has indicated, believing CENTCOM must have misunderstood the report from the field.

CAPT Hansen decided he needed to talk with CENTCOM to clarify the situation and make his reservations known. When he was able to contact Tampa, a sergeant at

CENTCOM advised him that the only person of authority in the headquarters at the time was Brigadier General (BG) Jones, who was unavailable as he was attending an important briefing. CAPT Hansen directed the sergeant to interrupt the General and tell him the call was urgent.

Within two minutes, BG Jones was on the phone. CAPT Hansen explained the situation, and shared his concerns about the mission. BG Jones was surprised to hear of the mission as he was completely unaware of the airstrike that was in progress. He agreed this strike was inappropriate given the lack of specific information concerning the target, and said he would take action to cancel it. But, he added, the vehicles observed may be very significant. He asked CAPT Hansen if he could get his forces into the compound and exploit the opportunity. It was certainly possible that someone of importance had arrived that night.

CAPT Hansen had a plan on the shelf for an assault; he would, he assured the General, dust it off and make sure it still fit the circumstances. He believed they could assault the target, capture or neutralize resistance with acceptable risk, but could only confirm that after reviewing the plan. After agreeing, BG Jones broke off the conversation to cancel the airstrike.

The strike was cancelled thirty minutes prior to its scheduled time-on-target. Within hours, CENTCOM sent the JSOTF an execute order to conduct a raid against the compound as soon as feasible.

When asked to put a team on the compound to exploit the planned airstrike, CAPT Hansen had hesitated. CPT Smith's SF team on site did not have enough men or firepower. He would have to divert another team, which would be forced to go into the compound without rehearsal or preparation. The mission was doable, but very risky.

Executing the Assault

Executing an assault against the compound entailed far higher risk than reconnaissance following an airstrike. CAPT Hansen decided he would delay until the following night, while CPT Smith continued his surveillance of the target. If CPT Smith observed anything critical, he could speed up the time line if necessary, but his forces

needed the extra twenty-four hours to reposition troops, assemble the team, and study the terrain and the intelligence, in order to make sure they went in ready. By waiting twenty-four hours, he risked missing any leadership that might have arrived that night, but he significantly reduced the risk to his own forces by giving them adequate time for planning and preparation.

The finished strike plan called for a total of sixty Special Forces and U.S. Federal Agents who would use six helicopters to assault the compound. Prior to the assault, CPT Smith and his team would move in closer to the target to better observe and report activity, and would watch for any threats they might see during the raid. By that night, all was ready. Insertion onto the target was scheduled for 2200.

The helicopters departed Qandahar and flew together, separating twenty miles from the target in order to land simultaneously at each helicopter's designated Helicopter Landing Zone (HLZ). Three of the helicopters missed their designated HLZ's due to a navigational equipment errors and 'brown outs' from dust kicked up by the helicopters' rotors. The helicopters drifted several hundred yards while trying to find better landing spots. As a consequence only one of the six SF Teams was able to achieve the surprise they desired.

Immediately upon landing one SF Team exited its helicopter and approached the compound to breach an entry. The twelve men burst into the compound, and immediately encountered numerous hostile personnel who had been awakened by the helicopters and the noise. The OIC verbally took control of this group with a small security element while the rest of his team began clearing the buildings inside the compound.

On entering their first building, they fought hand-to-hand to detain two combative males they found with a group of women and children. With the room under control, the SF soldiers realized the room was plastered with Osama bin Laden posters and stocked with mortars, rocket propelled grenades (RPGs), and a variety of ammunition. Nearby, they discovered a bunker with large amounts of ammunition and anti-tank mines.

Another team had landed so far away that they entered what they thought was an outbuilding of the compound complex, but found themselves in a mosque with one person inside praying. The SF soldiers flex-cuffed the individual with plastic handcuffs,

and left. As they moved on to the target compound, the team saw two people emerge from a ditch and sprint away into the darkness. The team did not fire and continued towards the compound.

Almost ten minutes after the first team had arrived; the second team breached the closed northern gate and entered, moving immediately to nearby buildings. They broke into a locked building, finding a large box inside; moving immediately into the next room, seven women and six young children sat against the far wall of the room. The SF soldiers secured the women and children with flex cuffs and returned to the first room to open the box. It contained a wealth of documents, passports, photos, numerous AK-47s, RPGs, mortar tubes, and a collection of old rifles.

Leaving several men to guard the box along with the women and children, the SF soldiers continued clearing buildings. They found the door to the next building locked, and as they prepared to breach the door with a shotgun, one of the soldiers noticed through a crack in the door what appeared to be a woman on her knees on the other side, listening. The soldier stopped the breacher from shooting the locking mechanism, which would likely have killed or seriously wounded the woman. Instead, two men mechanically breached the door -with crow bars and force - and found the woman with a number of children and three men sitting next to a large safe. One of the men was combative; an SF sergeant wrestled him into submission, while his fellow soldiers ensured that the other two males remained passive. In the safe, they found 198,000 Pakistani rupees, two AK-47s, four RPGs, and binoculars.

A third SF team had landed far from the compound. As they struggled across the rough terrain in total darkness, they came upon an individual who immediately fled. Shouts and warning shots stopped the individual, who was promptly searched and flex-cuffed. Nearing the compound, the team came upon an outbuilding and prepared to enter it¹. Their flash-bang set the first building afire, driving four males from the building. Two escaped by leaping into a ditch and disappearing into the dark. The remaining two struggled violently before being subdued.

The third SF team began clearing the compound's remaining buildings. In the first, they found numerous documents, weapons, women, children, a young man and an older man. The team subdued the older man after he became very combative.

To the SF soldiers' surprise, the women immediately put their hands together in front of them to be flex-cuffed whenever the soldiers approached them. During previous assaults in Afghanistan, women usually became hysterical upon seeing U.S. soldiers and were frequently combative and resistant – they expected to be raped by the Americans, and to have their children taken away from them. Word had quickly circulated within Afghanistan that U.S. soldiers would not rape or mistreat women and children, but would simply flex-cuff them. Many Afghanis, these women included, willingly consented to this relatively gentle treatment.

Once the compound was secured, the FBI agents accompanying the soldiers identified men for further interrogation, hanging chemical glow-lights around their necks in order to distinguish them from the other detainees. The SF team collected all of the munitions and weapons, which were destroyed by an explosive ordnance disposal (EOD) team prior to extraction. A little over an hour after drop-off, the helicopters extracted the Americans and carried seven men identified by the FBI for further investigation.

Operational Concerns

Prior to the assault, CPT Smith and his team had moved their observation point (OP) closer to the compound in order to better support the raid. After the assault, CPT Smith and a small number of his men were directed to stay behind to continue to watch the site for any further developments. The day after the assault, as they watched wary locals approach the compound, another group headed into the hills. As they passed within one hundred meters of the team's position, the locals spotted the OP and approached. Clearly agitated, the locals angrily gestured for the SF soldiers to leave. CPT Smith had one of his snipers stand up and point his weapon at the approaching men, who immediately calmed down and became more conciliatory as they approached the OP.

One of CPT Smith's sergeants attempted unsuccessfully to communicate with the farmers in Arabic. Frustrated, they left but returned with a village elder who spoke Arabic. The elder offered to house, feed, and provide water to the SF soldiers, if they

promised to never bomb his village. The sergeant tactfully declined. Later that night, CPT Smith and his men were extracted by helicopter back to the headquarters.

Post Operational Analysis

The post operation analysis indicated that the operation against the compound at Shkin was an intelligence coup. Though the operation had not captured key Taliban or Al Qaeda leadership, the prisoners and documents that they did capture proved of great value for later operations.

Questions for Discussion

1. Did Capt Hansen have a moral or legal obligation to contact CENTCOM and inquire about the planned strike?
 - Should he have been held accountable had he not made that effort?
2. Did CENTCOM assume too much risk in choosing to put ground forces against this target instead of bombs?
 - What could have gone wrong?
 - Why did they choose to assume this risk?
3. If the B1 had not been stopped and the compound had been bombed, would this have been a war crime? Why or why not?
4. If it were later determined later that Osama bin Laden had been in the vehicles coming from the border, and been at the compound on the night of the scheduled strike. Would you still agree with the decision to cancel the strike? What about Capt Hansen's decision to wait twenty-four hours to conduct the raid?
5. The SF soldiers had many opportunities to shoot to kill. Why were they reluctant to do so? Did they assume too much risk?
6. What were the advantages of conducting this operation the way it was conducted? What were the disadvantages? What were the risks?

End Notes

¹ Prior to entering a room or building, soldiers frequently throw in a “flash-bang”, a small explosive charge which creates enough light and noise to temporarily stun and disable anyone in the room.

Case Study 15: Command Climate and Unit Cohesion: A CSSD In Iraq

Case Summary: As a Combat Service Support Group's Marines experience enemy action, severe weather, and sleep deprivation, the officers and staff non-commissioned officers of that unit struggle to overcome a poisonous command climate. This case study is drawn directly from the investigation of an actual CSSD deployed in support of Operation IRAQI FREEDOM I.

Discussion Topics: Judgment, Bearing, Dependability

Target Audience: Staff NCOs, Field Grade Officers

Purpose: The narrative is designed to support discussion of two main topics. The first is command climate. Here we explore issues related to developing and building trust with subordinates, and maintaining morale. The second theme is command and control. Here we consider how information flow and command structure can solidify or erode a leader's actual authority.

Developed by: Major A. S. Dreier, USMC

Discussion Leader Notes:

Table Of Contents

Introduction	295
A Growing Command	295
Setting the Tone	296
The Staff.....	296
Commander's Guidance and Media Relations	299
Command and Control	300
Subordinates' Responses	301
Sexual Harassment.....	302
Transfer of Authority.....	302
Summary.....	304
Questions for Discussion.....	306
End Notes	313

Introduction

During Operation Iraqi Freedom I (OIF I), Combat Service Support Group-11 (CSSG-11) provided logistical support to the 1st Marine Division as it fought to topple Saddam Hussein's regime in Iraq. In addition to enemy action, severe weather, and sleep deprivation, the officers and staff non-commissioned officers (SNCOs) of CSSG-11 overcame obstacles to mission accomplishment created by their commanding officer. The command investigation leading to that officer's relief-for-cause would note that the unit had performed superbly, but this performance was due almost wholly to the leadership and ingenuity of the officers and Staff Noncommissioned Officers (SNCOs) subordinate to the Commanding Officer (CO). The junior leaders understood the mission and rose in the face of adversity to see that 1st Marine Division (1st MarDiv) received the support it needed during the first large-scale combat operation the Marine Corps had seen in more than a decade.

This case study outlines the CSSG-11 commander's unique interaction with subordinates, provides an overview of the command and control structure which evolved, and describes the responses (both effective and ineffective) by the staff and subordinate commanders. Descriptions of events are based on witness statements and findings in a 1st Force Service Support Group (1st FSSG) Command Investigation. The narrative should not be interpreted as suggesting any best or worst practices. Rather the narrative is designed to support discussion of two main topics. The first is command climate. Here we explore issues related to developing and building trust with subordinates, and maintaining morale. The second theme is command and control. Here we consider how information flow and command structure can solidify or erode a leader's actual authority.

A Growing Command

In July 2002, Brigade Service Support Group-1 (BSSG-1) (which would soon be re-designated as CSSG-11) underwent a change of command. The colonel receiving BSSG-1 had served as a logistician in the first Gulf War, and was now recognized as one of the most talented logisticians in the Marine Corps. The unit, however, would

need not just technical expertise but also sound leadership as BSSG-1 grew from its skeletal staff of thirty-two personnel in the summer of 2002 to over 1,800 in December of that year, when they would deploy to Kuwait. Complicating this growth, some personnel would report directly from MOS school. Others would be serving in billets they had never filled, or be working entirely outside their MOS. Naturally, the colonel had a staff to support his efforts, and he met with them upon his arrival.

Setting the Tone

The colonel began his first meeting with his sergeant major saying, "Sergeant Major, I have had to relieve four sergeants major in my career." He then explained why he had recently relieved a gunnery sergeant from his staff.¹ In spite of this chilly start, the commanding officer (CO)/ sergeant major (SgtMaj) relationship solidified over time.

Prior to the invasion of Iraq in March 2003, the Sergeants Major of CSSG-11 and CSSB-10² assembled their deployed Marines for the Marine Expeditionary Force (MEF) Commander's speech. Arriving early, the colonel informed the sergeants major he was not pleased with the set-up. The sergeants major explained that the set-up complied with the Drill and Ceremonies Manual. The colonel replied, "We aren't going to do it by the manual. We are going to do it the way I want it done."

After the speech, the CSSG-11 SgtMaj spoke with the colonel regarding the need for all SNCOs to be able to act on matters for which they were responsible, without seeking the colonel's approval. The colonel made clear that he would not change the manner in which he ran his command.

The Staff

The command employed three watch officers; all were lieutenants working outside their MOS; none had a background in logistics. At the watch turnover briefs, the colonel would ask them questions of increasing depth and specificity until the watch officer could not answer (e.g. on one occasion, he asked about information he (the

colonel) had learned through a personal conversation with the Commanding General of the Force Service Support Group (FSSG)), then he would tell the officers they had failed by knowing less than he did, threaten to fire them, or ask if he needed to do their job. A running joke within the command was, “You may begin firing when your watch officer appears.”

While the watch officers’ exposure made them regular targets, other members of the staff were occasionally counseled, often in provocative terms. The colonel openly referred to one captain as a “coward” and a “candyass” because he had delayed a convoy until security vehicles arrived. Another was vilified as a “liar” after he incorrectly reported the operational status of a piece of gear. The colonel referred to the lieutenant colonel commanding his subordinate Combat Service Support Battalion (CSSB) as a “leadership failure” because the lieutenant colonel did not employ the same command style as the colonel. The colonel even informed his executive officer (XO) at a staff meeting that he had lost all trust and confidence in the XO’s abilities. (When the XO asked if this meant he was fired, the colonel said, “No”).

The colonel’s level of concern for his subordinates was apparent in other ways. Early in the war, the colonel led his forward command post (Fwd CP) team, or CSSG Fwd, ahead of tank and infantry units toward an engagement between the division’s forward elements and the enemy. The CSSG Fwd convoy was halted short of the battle area and directed back toward the rear. As they retrograded, a reporter asked the colonel if he was concerned about bringing a logistics unit so close to the front lines. The colonel replied that it did not matter to him because he had already lived a good life. His Marines overheard this.

Female Subordinates

Most officers and SNCOs of CSSG-11 were used to brusque dealings with the colonel. Several noted that when they greeted him in passing he would often ignore them. An exception to this was female Marines, whom he would not only respond to but would generally stop to converse with, as he placed a hand on their shoulder. They nicknamed this move “the Claw.”

The colonel would also travel between his CPs and to the ruins at Babylon and other interesting areas, requesting the company of specific females. He would then have pictures taken with his arms around them as a group or individually at the sights. In one instance, while his S-4 officer was updating the colonel in the command tent, she felt he was not paying attention to what she was saying. She paused.

“Are those cammies thin material?” he asked. “They sure do fit you nice.”

One female he frequently traveled with, and eventually requested by name for assignment to his command, was a flirtatious Public Affairs Officer (PAO).³ The colonel was observed following her around and having his picture taken with her during one outing. On their return from another trip, the colonel ordered his driver to unload and carry the PAO’s gear for her. He further made her the sole exception to his policy requiring the wear of complete uniforms, permitting the PAO to roam the CP and the camp wearing flip-flops and no blouse.

Outside Units and Subordinate Commanders

In talking with unit commanders of the Ground Combat Element, the colonel often promised specific support without consulting his staff to determine the availability of supplies and transportation assets. When the full amount of support turned out to be unavailable, the Combat Service Support Company (CSSC) Commanders would have to lower the units’ expectations. The colonel, in turn, would inform the unit that the shortfall was due to the CSSC Commander’s lack of ability.

Key Advisors

The colonel’s abrasive behavior affected information and advice from subordinates in the course of operations. As U.S. forces approached Baghdad, the colonel’s liaison to Regimental Combat Team-1 (RCT-1) recommended to the colonel that certain logistical assets be transferred to another unit. The colonel replied angrily, “Do not f---ing tell me what to do. Never f---ing do that again.”

CSSG-11’s XO was a major who had been at the unit for months prior to the colonel’s arrival. The XO was extremely intelligent, had played a key role in developing

the plans to support 1st MarDiv upon deployment, and had an excellent working relationship with the existing staff.

Like other members of the staff, however, the XO had difficulty advising the colonel. At one staff meeting, the XO informed the colonel that another unit was in a situation and had asked to keep a CSSG-11 rough terrain cargo handler (RTCH) container-mover longer than originally planned. He also offered that CSSG-11 could make do without the RTCH for the time being. The colonel told the XO that he was wrong, he "gets an F," and berated him for more than two minutes in front of the staff before continuing the one-sided discussion outside the tent.

Commander's Guidance and Media Relations

The colonel's guidance changed frequently. During prewar planning, the colonel would focus the staff in a new direction every few days. During the war his guidance changed more often. In a single conversation, the colonel ordered the XO to emplace at least five different quantities of supplies at a single Rapid Replenishment Point (RRP). If a Marine pointed out that the colonel's earlier guidance was different, the colonel would deny it and turn on the Marine.

Prior to deploying, the colonel had stated that he did not want to speak to the media. "They'll misquote me," he said. The colonel informed his officers and SNCOs that he wanted the press to "talk to the lance corporal and the PFC and hear their story."

Once deployed, however, the colonel held regular press briefings, and would pull reporters away from his Marines to update the newsmen. He also dispatched five Marines from al Kut to SA Anderson to retrieve satellite phones for reporters to use (It was after dark, and there Fedayeen were rumored to be operating along the MSR his Marines would traverse). During the Battle for Baghdad, he had reporters cross the unsecured Diyala River bridge ahead of him (placing them in jeopardy) so they could photograph him making the crossing.

Command and Control

Procedure

CSSG-11's staff worked from two command posts, a Forward (Fwd) and a Main. Prior to the war, the unit had rehearsed staging the Fwd CP for movement when the Main was operating. On the third day of the war, however, the colonel berated his Assistant Operations Officer for not having the Forward CP processing requests while the Main was operating. Thereafter, both CPs frequently processed requests from the division simultaneously but at different locations, leaving the specific function of each unclear and leading to the mishandling of many requests for support. While officers at the Fwd CP were often undertasked, their counterparts at the Main CP often worked shifts in excess of twenty-four hours without rest.

Positioning and Information Flow

The colonel decided that as he was the decision-maker, information should flow to him, not away. When he received information at the Fwd, he would not pass it to the Main. Since most of CSSG-11's planning and execution took place at the Main CP, two issues resulted: First, the colonel was absent from the Main when developing situations required hundreds of planning changes. Second, the colonel's hold on information made operations at the Main CP less efficient.

When the Colonel was not at either CP, operations were further hindered. When CSSG-11 was directed to relocate to Ad Diwiniya, the Colonel stated he would travel to the Forward CP to oversee displacement. Accompanied by a PAO and several reporters, he departed for the Fwd early in the morning. Six hours later he had still not arrived. Blue Force Tracker indicated he was at a village eighteen miles from the Iranian border. There, he and the press were having lunch at the home of a Free Iraqi Forces soldier. The colonel arrived at the Fwd CP too late to displace during daylight.

Subordinates' Responses

The Sergeant Major

The CSSG-11 SgtMaj later told investigators that he was unable to advise the colonel on any matter, so he would pass the colonel information when required, but if an actual issue needed to be addressed, he would work on it with the XO or the Operations officer. The SgtMaj confirmed that the XO was the “go to” person on any issue that needed resolution.

However both he and the XO were powerless where the colonel had already made a decision. Toward the end of the deployment the First Sergeant of Combat Service Support Company-115 (CSSC-115) appealed to the SgtMaj for a Marine who was no longer needed for the mission to return to CONUS to handle a personal matter. The colonel had already denied the request. “I agree with you,” the Sgt Maj told the First Sergeant, “but there’s nothing I can do.”

The Watch Officers

In an effort to minimize the humiliation from the colonel, the watch officers spent the bulk of their watch attempting to assemble “the perfect brief,” often this came at the expense of mission requirements. This was undesirable, but the reduced humiliation inflicted on the watch officers had great effect in rallying the staff. The XO directed all briefers to report early so they could collectively review everything being presented to the colonel. He additionally tasked three captains on the staff to help the watch officers prepare. Other staff members would voluntarily assist the watch officers, and members of the Surgical Company would pressure the senior physician, a Navy Captain, to attend briefs because his presence seemed to reduce the hostility displayed by the colonel.

Regardless of the length of preparation or the number of Marines involved, the colonel would probe until the briefer failed to produce an answer, and then announce the briefer’s failure to the assembled staff. His outbursts were gut-wrenching for the exhausted briefers, and finally broke the spirit of at least one lieutenant. After the occupation of Baghdad, a number of officers spent hours preparing the watch officer for every possible question. However, after the colonel’s third question, the watch officer

began to answer “I don’t know” to questions he had been well prepared for. A captain later asked why he didn’t answer the questions. The lieutenant replied, “Why bother? I just wanted to get it over with.”

At the time of the investigation, all but one of the lieutenants assigned to the staff, the subordinate battalion, and the companies planned to resign their commissions at the end of the deployment.

Sexual Harassment

The XO was aware of the undercurrent of preferential treatment toward females, but unaware of any sexual harassment. When a female officer in the surgical company eventually raised the issue of harassment, the XO spoke with the FSSG Staff Judge Advocate (SJA). He was informed that a formal complaint must precede any action.

The female officer spoke with two female staff sergeants who had reluctantly, at the colonel’s request, powdered his back after he showered; and a female corpsman she thought felt similarly uncomfortable about the way the colonel touched and spoke to her. But neither the SNCOs nor the corpsman agreed to submit statements. Because the officer did not want to go through the process alone, and because she felt her life would be easier if she did not anger the colonel, she chose not to write a statement herself.

After being told she filled her uniform well, the S-4 officer brought the issue to the S-3 Officer, who was serving as acting XO. He spoke to the colonel who expressed surprise that his words were ‘misinterpreted.’ Thereafter, he did not touch the S-4 or make suggestive remarks to her. Before the investigating officer arrived at CSSG-11, the colonel apologized to her for the incident.

Transfer of Authority

The XO attempted to ensure informed decisions by advising the colonel, but the colonel proved resistant. Shortly after combat operations began, the colonel entered the CP with several reporters, told everyone to close their computers then gave the press a situation brief. After the brief, the XO approached the colonel privately and advised him that there was a MEF order stating that media were not allowed in

command posts, and that most of the battle map was in view (two Marines had stood in front of it, trying to obscure it, but one was very short). The colonel reprimanded the XO for second-guessing him. He would bring reporters into the tent again after this.

Unable to guide the colonel, the XO attempted to shield staff members from the colonel's wrath. While in Baghdad, CSSG-11 was directed to support a task force proceeding to Tikrit. After providing guidance, the colonel departed, visiting the 1stMarDiv's operations tent before returning to his own CP where the S-3A began to brief the plan they had developed. The colonel cut him off, telling the captain his plan did not match the division's. The colonel boasted that he had more current information on division plans than the S-3A, indicating the captain's incompetence. The XO injected that division had not informed them of their change in plans but that the staff would incorporate the new information. The brief continued for a few minutes, but the colonel again silenced the briefer with fresh criticism. The XO spoke up again, taking the blame for the briefer. The colonel stated across the length of the briefing tent that the XO was a failure and that the staff was a failure. He specifically stated that their planning method was flawed.

The XO and the staff returned to planning. Less than an hour later, the colonel called the XO. Although the colonel had been out of contact with the staff since the recent upbraiding, he told the XO he and the staff had recovered themselves and were doing great.

- As noted earlier, the divided command structure of the Fwd and Main CPs meant the colonel was not at either CP when many time-critical decisions were made and orders issued. Because the XO always remained with the Main, he filled the gap.
- Because the colonel was not receptive to advice or information (e.g. when the RCT-1's advice was met with "Don't f---ing tell me what to do...") information flowed instead to the XO.
- The colonel further shifted power to the XO by giving conflicting sets of guidance. The uncertainty in the colonel's statements required the XO to provide the staff with his interpretation of the colonel's desired end state. In short, the colonel's guidance became what the XO thought it was. On

certain matters, however, the XO adopted a policy of waiting for confirmation. When the colonel directed non-punitive letters of caution (NPLCs) be given to his company commanders, or to his sole battalion commander, (which he often did, for offenses such as one of their Marines in a convoy having his sleeves rolled up) the XO would wait for confirmation. In the case of the NPLCs, it never came, so the letters were never prepared.

- A similar policy was adopted by at least one subordinate commander. CSSC-115 followed in trace of RCT-5 on the push to Baghdad. The company provided RCT-5 the necessary fuel through three overworked M970 refuelers. The colonel however demanded all three M970s be returned. The company commander, realizing the loss of the M970s would cripple RCT-5's rate of advance, decided to keep the trucks. Two days later, with the trucks still not returned, the colonel summoned the CSSC Commander on the command net and, among other things, threatened to relieve her of command. She was not, however, removed from command.

Summary

In the end, the stress level and negative command climate affected morale, but not the performance of CSSG-11. The sentiment of many SNCOs and officers within CSSG-11 was summarized in a statement made by the Sergeant Major of CSSB-10: "I would not willingly follow the colonel [of CSSG-11] anywhere." He and others credited the XO with holding up morale and being the "glue" that held the command together. Most considered the XO the actual leader of CSSG-11. A junior officer explicitly told investigators that if the colonel told him to do one thing and the XO told him to do something else, he would have followed the XO's order.

However, living in the path of the colonel's wrath drained on the XO. He discussed with the CO of CSSB-10 the option of requesting mast¹. Twice, the XO came very close to resigning. In the end he did not, fearing life would become worse for the staff or the command would become ineffective. Either was unthinkable while they were supporting a Marine division in combat.

As the FSSG prepared to return to CONUS following the fall of Saddam Hussein's regime, the colonel accused the Commanding Officer of CSSB-10 of being disloyal to him. This was the final straw for CSSB-10's CO, who informed the 1st FSSG Chief of Staff that he wished to be relieved of his command.

The Chief of Staff denied the request. He did, however, meet with the colonel and advise him that his command seemed to be headed toward a crisis. He instructed the colonel to meet one-on-one with the Commanding General, 1st FSSG, the next day. After leaving the Chief of Staff, the colonel accused his SgtMaj of being disloyal and going behind his back to group.

The colonel's meeting with his FSSG commander produced an unanticipated result. "Commanders have the luxury of choosing their personality," he told his assembled command. "For the last six months I chose to be like John Wayne. Well, now that hostilities are officially over, I am going to change. I'm going to be more like Kevin Costner..." Following this announcement, the colonel abruptly stopped yelling at staff meetings.

Nonetheless, a few weeks later an unsigned letter accusing the colonel of sixteen improper acts arrived in 1st FSSG's mail. The 1st FSSG launched a Command Investigation, which substantiated fifteen of the allegations and uncovered many others.

The colonel was relieved of command.

End Notes

1 The XO decided against it thinking there was no single instance where the colonel had clearly acted beyond the scope of his authority, and also the prospect of a reprisal by the colonel seemed very likely.

2 Information throughout this case study drawn from the Preliminary Inquiry into the allegations of abuse at CSSG-11 contained in an undated, anonymous letter received by 1st FSSG (Fwd) at Camp Iwo Jima, Kuwait on 29 July 2003.

Questions for Discussion

Troop Welfare

1. Using the colonel's relationship with his sergeant major as an example, discuss how the colonel applied the following two Leadership Principles:
 - *Develop a sense of responsibility among your subordinates*
 - *Know your Marines and look out for their welfare* (Discuss in terms of the Platoon Sergeant / First Sergeant / Sergeant Major role of key enlisted advisor)

Responsibility: Marines should feel ownership of the duties associated with their billet. Here, the sergeant major was restricted from performing actions clearly within the scope of his billet. This prevented the sergeant major from further developing his abilities, and possibly caused him to lose touch with skills he'd developed when he'd had commanders that allowed him to do his job. By not allowing subordinates to develop, a leader is hurting the Marine Corps.

Welfare: The sergeant major is a commander's key enlisted advisor. He will have a far better reading on the morale, welfare and issues affecting the Marines than a senior officer can find out directly. And, given the opportunity, he can solve many of their problems. A second issue in negating the sergeant major was that the SNCOs of CSSG-11 could see that the sergeant major had no impact on the colonel and that the Marines had less of a voice in the command. The Marines had less reason to think the command was concerned for their welfare. The colonel reinforced his lack of concern by making statements such as 'he did not mind putting his unit in danger because he had already lived a good life.'

2. The colonel sent five Marines through unsecure territory at night (when their ability to spot and respond to an ambush would be reduced) in order to get satellite phones for reporters.

- Assess the soundness of this order in terms of Operational Risk Management principles (hazard severity and probability of mishap) versus benefit to the mission/Marine Corps.
 - Would your result change if the Marines had a Public Affairs MOS?
3. The sergeant major understood he had a duty to the Marines of CSSG-11.
- When his superior would not address their problems how did the sergeant major uphold his duty to his Marines? Could he have done anything different?

He brought issues to the XO rather than the colonel. There were many ways he could have handled his situation. One possible solution would have been to bring his overall situation to the attention of the next key enlisted advisor in his chain, the 1st FSSG Sergeant Major. The colonel's various unfounded accusations against his CSSB Commander and his sergeant major of 'disloyally' speaking to the FSSG staff suggest the colonel knew the FSSG would not approve of the way he ran his command and might decisively correct the problem.

Counseling

4. Marines expect to be held to high standards, and sometimes 'tough love' (e.g. a no-frills, very pointed counseling) can be the jump-start a Marine needs to get on track and perform better. At watch turnover briefs, however, the colonel routinely asked detailed questions until the briefer failed to produce an answer. Then he would tell them they were a failure and question their ability to perform their duty.
- How does going to extraordinary lengths to find fault with an individual differ from 'tough love'?

Tough love will involve setting standards the Marine can reach. The criticism is not mean-spirited; it tells him what the problem is and how to correct it. Once the Marine corrects the problem, he should be praised for his improvement.

Going further and further to continually find fault does not set a standard of performance the Marine can achieve.

5. Near the end of the deployment, one watch officer began answering, “I don’t know” long before the colonel began questioning in depth – the lieutenant quit trying. As a leader with an untalented subordinate, you may be forced to repeatedly counsel the Marine for substandard performance.

- How can you word your counselings so that that the Marine continues to try and does not simply give up the way the watch officer did?

Any negative counseling should include positive statements. Few people are *complete* failures. If a Marine shows up for inspection with his uniform in disarray, perhaps he managed to shave properly, or at least cut his fingernails. Compliment the positive aspect to maintain his dignity and self-esteem while you tell him what he’s done wrong and how he can fix it. In short, without crushing the Marine’s spirit, let him know what the standards are, let him know he can meet them, and then praise him when he achieves them.

Teamwork

6. Teamwork is key to military success. *Train your Marines as a team.* By humiliating and insulting members of his staff the colonel united them in their dislike of him and influenced them to spend extra time assisting the watch officers.

- Did this teamwork benefit the command?

Not in a way a good leader would desire. In exchange for lowering morale, and causing them to dislike him and lose respect for his judgment through unjustified insults, the colonel gained extra hours of work that were devoted to better briefs—something that had little effect on improving mission performance during the war. The spirit of unity below the colonel may have helped the unit achieve other successes, but it was to the XO that the Marines rallied.

Trust

7. Any Captain of Marines can be expected to promptly follow the combat orders of a colonel. Yet when the colonel of CSSG-11 ordered CSSC-115 to return three M970 refuelers, the company commander deliberately hesitated for two days. The M970s were essential to keep RCT-5's advance from stalling and the captain was determined in her support of that unit, but as Marines we normally trust our leaders to understand the wider scope of operations and distribute resources accordingly (e.g. he may have needed the M970s to support operations more critical than the further advance of RCT-5).

- How did the leadership traits of *dependability* and *justice* as displayed by the colonel erode the captain's trust in his judgment enough for her to risk disobeying the order to return the M970s? (Note: *Justice* is not only about punishment. It covers weighing all sides to an issue in making decisions.)

Dependability. A good leader does what he says he will do. He will adjust his course of action if the situation changes or he receives new information, however he can be depended on to stick to his decisions so long as the facts and information have not changed. The fact that the colonel often gave orders with apparent disregard for his earlier commands, and changed his guidance even when the situation and the available information remained the same, made him undependable. Others used this lack of dependability as an excuse to pick and choose which of his orders to follow.

Justice. A good leader will make informed decisions balancing opposing points of view and using all the information available. In the facts above, we've seen that the colonel refused to take advice. Therefore, the CSSC-115 Company Commander, who was determined to support RCT-5 to the best of her ability, could not trust the colonel to weigh her advice on the importance of the M970s to RCT-5 against whatever need or whim caused him to want them returned. In short, she had reason to suspect he acted without *justice*.

Note: Distrust of a superior will not prevent an individual from being convicted at court martial or NJP for disobedience, but such a conviction is more tragic when the disobedience is caused in some part by a leadership failing of the superior.

Information Flow

8. MCDP-6, *Command and Control*, states, “Control takes the form of feedback—the continuous flow of information about the unfolding situation returning to the commander—which allows the commander to adjust and modify command action as needed.” In short, leaders need information to effectively make decisions. The colonel’s attitude toward his staff and the way he structured his command transferred the information flow to his XO. However, the colonel’s questions to his subordinates demonstrated that he had access to some information they did not have.

- What can a leader achieve by gathering his own information and not telling his staff what he knows?

He can determine if they are giving him accurate and complete information. We have all met people who appear to be very knowledgeable, but who we eventually realize are putting on an act. By not relying exclusively on one source of information, a leader can double-check a source’s accuracy and the extent to which they know what they are talking about.

- What is the danger in withholding information to check a source’s accuracy?
How can this danger be avoided while still using this method to check accuracy?

As demonstrated in the narrative, by withholding information he received directly, the colonel consistently reduced the efficiency of his Main CP in planning and executing operations. This problem could be avoided if rather than interrupting the flow of information to his staff, the colonel checked with outside sources to gain information his staff should have collected and incorporated into their plans.

Consistency

9. The XO did not issue several Non-Punitive Letters of Caution the colonel had directed him to prepare because the colonel's constantly changing guidance led him to a policy of inaction on the colonel's taskings until the colonel confirmed his desires by issuing the same guidance a second time.

- Was waiting for confirmation of an order the right thing to do?
- Did the colonel's lack of clarity justify the XO in disregarding orders he disagreed with?

This may have been the 'just' response (in the sense of justice) because the entire scope of the colonel's actions made his judgment suspect. However, the fact that orders have frequently changed in the past will never prevent an individual from being convicted at a court-martial for failing to obey an order. Disobeying an order is not the right thing to do unless the order is illegal.

10. Marines are aware of the need for flexibility, and live by the watchwords "few plans survive across the line of departure." The colonel of CSSG-11 never hesitated to change plans.

- What caused the Marines of CSSG-11 to view order changes in a fluid, combat environment as a flaw in their colonel?

Changes caused by unfolding combat operations were not the driver behind the colonel's changing guidance. Given no new information and no changes in the situation, the colonel would still provide new guidance superseding a prior decision he had made.

Preferential Treatment / Sexual Harassment

11. The colonel was known to give females special attention and privileges, and make suggestive remarks.

- How do preferential treatment and sexual harassment affect a command?

When praise and privileges are based on gender instead of performance, Marines will feel that what they do is unappreciated, or appreciated only because of their physical attributes. This lowers morale. False and inappropriate praise also reduces the credibility of the person giving it, makes them appear unprofessional and causes people to lose respect for them. Sexual harassment, as was the case with CSSG-11, made the recipients angry and uncomfortable in their work environment.

Media Relations

12. The colonel was very attentive to reporters needs. Why is the media important to the Marine Corps?

America could survive without a Marine Corps, but the nation benefits by having one. Without the media to tell what the Marine Corps' does and stands for, America will eventually fail to see the unique virtues of the Corps, and will be willing to see the Corps disbanded.

Resolving Chain of Command Problems

13. The colonel's leadership resulted in two events that prompted higher-level scrutiny of his command: the CO of CSSB-10 requested that the 1st FSSG relieve him, and an anonymous letter sent to 1st FSSG (Fwd). Prior to this, the XO had considered requesting mast, but decided against it.

- In light of the stress level, morale issues, and obstacles to mission accomplishment caused by the colonel, what actions might a member of the command have taken?
- Could they have taken these actions earlier in the deployment without disrupting combat operations?

In any situation, the first step is to collect enough information and any available documents to support the issue being presented. In this case, if a member of the command had brought the information about the colonel to the physicians attached to the command and asked them to raise the issue that the colonel needed to be evaluated, it is possible the situation would have been resolved. Another avenue may have been the chaplain. Otherwise, while there is always fear that an accused superior will retaliate, if a Marine is certain that a superior is involved in misconduct, he should bring it to a higher authority or a Judge Advocate's attention. If the Marine has solid evidence, he should do so openly and without delay.

End Notes

¹ Similarly, upon meeting his communications officer, he told the captain, "I have fired Comm O's before..."

² CSSG-11 was assigned CSSB-10 from Twentynine Palms as a subordinate battalion.

³ She would be court-martialed for sexual impropriety unrelated to CSSG-11 upon her return to CONUS.

Case Study 16: Notification of Death in Combat

Case Summary: A command mistakenly notifies a family that their Marine has died in combat. Upon learning he was not killed in combat but may have been wounded on an unauthorized activity and taken prisoner, they attempt to handle this sensitive issue properly.

Discussion Topics: Judgment, Courage, Justice

Target Audience: Staff NCOs, Field Grade Officers

Purpose: This study, originally published in 1998, alludes to the strategic impact of honesty, the issue of accountability to next of kin, and the need for courage off of the battlefield. This study functions well on its own, or paired with the Pat Tillman case study for studying casualty procedures, or with the Jason Dunham case study when examining accountability.

Developed by: Colonel Paul Roush, USMC (Ret)

Discussion Leader Notes:

Table of Contents

Introduction	317
The Incident	317
Questions for Discussion.....	318

Introduction

The following case study concerns a death notification sent to a Marine's parents. The notification was sent out based on false information. After it is discovered that the Marine might possibly still be alive, the command must decide how to handle the situation professionally.

The Incident

Three Marines, members of a Combined Action Platoon (CAP) in the Combined Action Program in Phu Bai Province in the Republic of Vietnam (RVN) observed an Air Force weather beacon descending not far from their CAP compound which was located in the center of a Vietnamese hamlet. They decided to retrieve the brightly colored parachute to which the weather beacon was attached. The distance was greater than anticipated, and they encountered en route a large enemy patrol. They were taken under fire and one of the three Marines was shot. The other two escaped. They reported that their comrade, left behind as they fled, had four bullet holes in his chest, was bleeding profusely, had stopped breathing, and had certainly died. The Commanding Officer (CO) of the Combined Action Group (CAG) wrote to the parents of the deceased Marine of his death and of the inability of his comrades to return his body.

A week later, Vietnamese intelligence reported that the Marine was seen alive as the enemy paraded him through a more distant hamlet. When confronted with this information, the other two Marines could no longer state with certainty that he had actually been dead when they left him behind.

The CO immediately summoned the two surviving Marines, who confessed he was not dead when they left him, but felt sure he perished soon after their departure. They described the multiple wounds in the Marine's chest.

Given the severity of the missing Marine's wounds, his CO concluded that the likelihood of the Marine's survival was extremely remote. He believed that giving hope to the Marine's family would be the worst possible decision. Since he had already sent the parents a letter that did not describe the frivolous nature of the incident's

circumstances, he felt that a second, more complete explanation would rob the parents of any semblance of meaning in their son's death.

The CO did not punish the surviving Marines, believing that they would punish themselves more than any disciplinary action on his part would do.

Questions for Discussion

1. The focus is on the Commanding Officer of the CAG as he must decide what to tell the parents of the Marine who was shot while on an unauthorized diversion while on duty in Phu Bai province in the RVN.
 - What is the probability that the missing Marine is actually alive?
 - Should the parents' hopes be raised based on this single report?
 - Should the parents have originally been advised of the unauthorized, recreational nature of the circumstances under which their son died or should they have received "sanitized" information; i.e., not false, but sufficiently incomplete so they believed their son's death had some purpose?
 - If the original letter was "sanitized" what are the implications for the decision now facing the CO?
2. What action, if any, would be warranted with regard to the two surviving Marines?

Appendix A: Law of War Principles for Small Unit Leaders

Marines will achieve victory on the battlefield in strict compliance with the Law of War. There is nothing in the Law of War that puts Marines' lives or the mission in jeopardy. Compliance facilitates victory and, at the end of every struggle, Marines will know that they conducted themselves in such a manner as to be judged as worthy successors of a long line of Marines that has gone before them.

MCRP 4-11.8B, War Crimes

... it is the individual Marine who is responsible for winning on the battlefield and upholding the values of the Corps.

The Way Forward
James T. Conway
Commandant of the
Marine Corps

1-17. In small wars ... the goal is to gain decisive results with the least application of force and the consequent minimum loss of life.

In small wars, tolerance, sympathy, and kindness should be the keynote of our relationship with the mass of the population.

FMFRP 12-15
Small Wars Manual

*7-37. Proportionality and discrimination applied in COIN require leaders to ensure that their units employ the right tools correctly with **mature discernment, good judgment and moral resolve.***

MCWP 3-33.5
Counterinsurgency

Marines keep their honor clean. Doing the right thing must guide our conduct in all operations, at every level, and in every application of tactics, Rules of Engagement (ROE), Law of Armed Conflict (LOAC), and escalation of force (EOF) procedures.

CG MARCENT Intent, 2007

Table of Contents

Introduction	321
Basic Principles of the Law of War (<i>Marines' Rules</i>)	322
Scenarios	330

Introduction

Members of the U.S. Armed Forces must comply with the Law of War during all military operations, including regular and irregular warfare, see Department of Defense (DoD) Directive 2311.01E of May 9, 2006, *Law of War Program*. In irregular operations (including stability operations), the challenge is balancing an aggressive warrior ethos against the requirements to avoid harming innocents and causing unnecessary suffering. Meeting these challenges in combat is what Marines do and have always done.

The following rules are drawn from Marine Corps Order 3300.4, *Marine Corps Law of War Program*. Use them to enable you and your Marines to win battles while keeping *our* honor clean.

Basic Principles of the Law of War (Marines' Rules)

(MCO 3300.4 of 20 Oct 2003)

- (1) Marines fight only enemy combatants.
- (2) Marines do not harm enemy soldiers who surrender. Marines disarm them and turn them over to their superiors.
- (3) Marines do not torture or kill enemy prisoners of war or detainees.
- (4) Marines collect and care for the wounded, whether friend or foe.
- (5) Marines do not attack medical personnel, facilities, equipment, or chaplains.
- (6) Marines destroy no more than the mission requires.
- (7) Marines treat all civilians humanely.
- (8) Marines do not steal; they respect private property and possessions.
- (9) Marines do their best to prevent violations of the law of war, and report all violations to their superiors.

Rule #1: Marines fight only enemy combatants.

Discussion: One of the most important rules under the law of war is that we must only intentionally target the enemy and his war fighting capability.

Who is a combatant? Combatants are generally defined as anyone engaging in hostilities in an armed conflict on behalf of a party to the conflict. Members of the

opposing armed forces are the best example; they are lawful targets because of their **status** as members of the enemy forces. Although civilians, chaplains, doctors and the sick and wounded are ordinarily considered noncombatants, their **conduct** (hostile actions or displays of hostile intent toward US forces) can make them lawful targets, as well.

U.S. forces have an inherent right of self-defense. Individuals who commit hostile acts, such as attacking U.S. forces, or display a hostile intent to harm U.S. forces may be engaged with the force necessary to neutralize or eliminate the threat they pose. Thus, both types of combatants (status or conduct-based) are lawful targets unless they are “out of combat” due to injuries or capture.

This distinction is not always easy to make, however. Uniformed, armed soldiers are easily recognizable while guerrillas, insurgents and terrorists often mix with civilians and dress in civilian clothes. Alertness and judgment are critical to ensuring that your weapons employment and tactics discriminate between combatants and noncombatants. Remember that decisive force is not indiscriminate force.

Rule #2: Marines do not harm enemy soldiers who surrender. Marines disarm them and turn them over to their seniors.

Discussion: Combatants who surrender or that you capture are no longer lawful military targets. The law of war requires you to respect and protect all detainees (whether civilians, prisoners of war, or common criminals), treating them humanely from the point of capture until the time of release.

What is humane treatment? First, you must allow the enemy to surrender (it is illegal to give “no quarter” orders). Next, follow the “Six Ss and T” to ensure you are meeting these obligations to treat them humanely: secure, search, silence, segregate, safeguard, tag and speed the detainees to the rear as soon as possible. Disarming them ensures they are not a threat to you or others as a matter of force protection. Next, you will

remove them from the combat area, allowing them to keep protective gear and personal items of non-military intelligence value (like family photos, wedding rings and identification cards), as well as providing them with water, food, and medical care if necessary. Your professionalism and commitment will ensure that your Marines do the right thing every time.

No one wants to fight U.S. Marines because they will lose; therefore, provide the enemy every opportunity to give up.

Rule #3: Marines do not torture or kill enemy prisoners of war or detainees.

Discussion: This principle of “humanity” is an extension of rule #2. Killing and torturing detained personnel is a crime under both international and domestic law. US policy requires us to humanely treat all prisoners, detainees, and anyone in our care and custody. This is the foundation for handling all individuals under the control of US forces. When the principle of humanity is ignored or abandoned, atrocities, brutality and inhumanity flourish.

Besides being a legal requirement, humane treatment provides practical benefits as well. If our enemies believe that they will be mistreated or killed following capture, they are more likely to resist and fight to the death. However, treating these individuals humanely provides an incentive for them to surrender and decreases their will to resist. Torture is not only unlawful; it also is counterproductive because it produces unreliable information.

Regarding questioning detainees: although Marines in the field may conduct tactical questioning of those they detain (think who, what, where, when, why-type questions), only trained interrogators can conduct interrogations (this is one of the reasons we “speed detainees to the rear.”)

Rule #4: Marines collect and care for the wounded, whether friend or foe.

Discussion: The law of war requires us to care for the enemy sick and wounded who cease to fight. Their treatment must be based on their medical condition and the urgency of their wounds, not their uniform, nationality, race, religion or sex. Furthermore, we must take actions to safeguard them from further attack, and understand that there is no such thing as a “mercy killing” under the law of war.

Because both sides have an obligation to search for the wounded and sick as the conditions permit, the military commander determines when it is possible to do so. He or she must carefully consider mission requirements and self-defense/defense of unit members, before directing searches for wounded enemy.

Finally, the obligation to collect and care for the wounded extends to the dead. Mutilation or desecration of dead bodies violates the law of war.

Rule #5: Marines do not attack medical personnel, facilities, equipment, or chaplains.



Discussion: These three symbols (the red cross, the red crystal, and the red crescent) are recognized medical marking emblems under the Geneva Conventions. These symbols may be applied to buildings, vehicles, aircraft and armbands; objects marked with these symbols must be protected from attack. Also note that the law permits hospitals to have armed sentries to protect them from thieves and unlawful combatants, and allows doctors and corpsmen to carry side arms for the same reasons.

Note that this protection is not absolute. Just as a civilian’s conduct can make him or her a combatant, if these symbols are misused to commit “acts harmful to the enemy”,

the protection is lost and you may attack in self-defense. For example, medical personnel lose protected status if they take a direct role in combat, such as a corpsman serving as a sniper, and a hospital would lose its protected status if it were really being used as an armory or command post.

Rule #6: Marines destroy no more than the mission requires.

Discussion: Do not target or attack what is not required to accomplish the mission or achieve your military objective. Avoid excessive or wanton destruction of private property and never attack undefended villages, towns, dwellings and buildings. Take actions to minimize collateral damage and protect private civilian property and historic and cultural sites. The more you destroy in battle, the more we will have to rebuild/restore in peace.

Rule #7: Marines treat all civilians humanely.

Discussion: All civilians must be respected and must never be intentionally targeted. You do not have to stop your mission to care for them, but do help civilians if it is safe for you to do so and it does not interfere with your mission.

What is humane treatment? Under Common Article 3 of the Geneva Conventions, we cannot discriminate against civilians based on race, religion, sex or nationality and must protect them from violence (rape, assault, murder, etc.). They may not be taken hostage (even if you think it might lead to “actionable intelligence”) and must not be subjected to cruel, inhumane or degrading conduct.

Note, however, that the protection for civilians from being intentionally targeted like combatants is not absolute. As discussed under rule #1, civilians have a duty to stay out of the fight and US forces have an inherent right of self-defense. Individuals who commit hostile acts such as attacking US forces or display a hostile intent to harm US forces may be engaged with the force necessary to neutralize or eliminate the threat

they pose. Therefore, once they take up arms against you and your Marines, they lose their protected status and are lawful targets unless they are “out of combat” due to injuries or capture. Once captured, they are entitled to humane treatment, same as with detainees or enemy prisoners of war (EPW).

Rule #8: Marines do not steal; they respect private property and possessions.

Discussion: The law of war has specific rules for this area. In addition, the specific rules of engagement may provide additional guidance.

Public/Government Property: As a general rule, public or government property may be taken for military necessity. For example, you could occupy a former Baath party compound as your command post, or use captured enemy weapons in self-defense. If you are using captured equipment, it needs to be repainted/remarked to reflect US use/ownership (to minimize the likelihood of fratricide, and avoid law of war violations (such as the improper use of enemy flags, military insignia, and uniforms during combat operations)).

Private Property: As a general rule, the temporary use of private property is allowed if there is military necessity and the action is approved by the appropriate authority, usually specified in the rules of engagement or operations order. You must document what property you take and if possible, provide the owner with a receipt. Later, you should return the property or notify your superiors so the owners can be compensated for their loss.

Contraband: Note that certain items may be prohibited based on force protection concerns; accordingly, seizure of these items may be authorized by the rules of engagement or operations order. Examples of contraband include, but are not limited to, personal and crew served weapons and ammunition, explosive devices and materials associated with such devices, and any other designated items whose possession could adversely impact military operations.

War trophies: There is clear and detailed guidance on the possession of war trophies and souvenirs. Do not retain items for personal use without express authorization from your commander. In many cases, this prohibition is a force protection measure, designed to protect you and your Marines from booby traps and from the effects of unstable munitions and poorly maintained or damaged weapons.

Rule #9: Marines do their best to prevent violations of the law of war, and report all violations to their superiors.

Discussion: Moral courage and self-discipline are the hallmarks of a professional warrior.

First and foremost, Marines look out for each other on the battlefield, protecting each other from external threats, and helping each other do the right thing in difficult situations. Train your Marines and Sailors to follow the law of war in all situations and supervise them to ensure they do so. Just as importantly, ensure that you set the example that you expect them to follow.

Furthermore, remember that “just following orders” is not a defense to violating the law of war. If you are ordered to commit a criminal act or law of war violation, you are obligated to seek clarification of the order (“Sir, are you telling me to do X?”), and ultimately refuse that order if it is unlawful. You are also obligated to report the situation.

Finally, note that although loyalty to fellow Americans is important, it does not override our duties to support and defend our Constitution and our way of life. Ultimately, every officer, SNCO, NCO, Marine and Sailor has a duty under the law and the Uniform Code of Military Justice to prevent law of war violations and to report violations to their chain of command. On those occasions where a reportable incident occurs, (defined as a possible, suspected or alleged violation of the law of war), promptly report the incident

to the chain of command, a judge advocate, chaplain, inspector general, or military police.

Scenarios

The following scenarios are designed to reinforce your understanding and application of the nine Basic Principles of the Law of War (the Marines' Rules). Each problem consists of a brief fact pattern, a statement of the key issues you should consider, and an answer that highlights the applicable rule (or rules) and provides an analysis of the problem.

1. We are at war with Badland, a country located in the Middle East. Your battalion landing team arrived in country approximately six weeks ago and is currently conducting offensive operations against Badlands armed forces. It is evening time and you are leading a squad-sized dismounted patrol to reconnoiter enemy defensive positions. As you reach the crest of a small hill, through your night vision goggles you observe three or four enemy soldiers manning what appears to be an observation post. They have not noticed your approach, and appear to be eating food and drinking. Although there are small arms and a least one crew-served weapon visible, none of these soldiers are pointing weapons in your direction.

Issues: Are these men combatants, and if so, can you target them? Do they have to display hostile actions or hostile intent toward you or your Marines prior to engagement?

Answer: Rule # 1. Marines only engage combatants. Based on their uniforms, proximity of weapons, and nature of their observation post, these men appear to be combatants. There is no evidence that these men have surrendered to US forces, nor that they are too sick or wounded to fight. At this point it seems that you have a military advantage (due to your night vision goggles and unobserved approach), coupled with an apparent break down in their discipline because they are not properly manning their posts. Under the law of war, you may engage and kill these men. Furthermore, there is no requirement for them to demonstrate hostile actions or hostile intent, because their

status makes them lawful targets at any time, any place, as long as they have not surrendered or are not too sick or wounded to fight.

Tactically you may not want to engage these men at this time. You are conducting a reconnaissance mission, so the engagement will give away your position and alert the enemy to your presence. This could be a serious problem, because at this point you do not know how many other enemy forces are operating in the area. In this case it may be best to simply record your observations and relay the information to your higher headquarters, before resuming your patrol.]

2. A few months have gone by. Your efforts have helped defeat the Badland's armed forces, so you are now assisting the local government with restoring security and stability. Numerous insurgent and terrorist groups have begun operating in your province, targeting the local law enforcement and government officials. While conducting a joint patrol with the local police, you begin taking small arms fire from a group of eight men in civilian attire. You and your unit immediately seek cover.

Issues: Are the men who are shooting at your patrol "combatants?" Why or why not? What, if anything, can you do?

Answer: Rule # 1. Marines only engage combatants. These men, although in civilian attire, are combatants based on their **conduct**. Their hostile actions of shooting at your patrol makes them lawful targets, and they may be killed as long as they are not in your custody or are not too sick or wounded to fight.

3. Your unit quickly gains fire superiority, ultimately killing six of the men and wounding two of the others. The two remaining men were injured by a fragmentary grenade. The blast separated both of them from their weapons, and they are lying approximately fifty meters in front of your position, moaning and begging for help.

Issues: Are these men still combatants? Why or why not? What should you do now?

Answer: Rules # 1 and 4. Marines fight only combatants. Although these men dressed in civilian attire were trying to kill you and the other members of your patrol a few moments ago, the circumstances have changed. The two men may be too wounded to fight. You should carefully observe the men, and if it is safe enough, attempt to move forward to capture and treat them. If the men are in fact too wounded to fight on, capture them and treat their wounds. In the event that one or both men are faking injuries in order to ambush you and the rest of your unit, you may then engage and kill the threat (or threats) at that time.

4. A company-sized Badland unit attacked your platoon's battle position. Thanks to accurate artillery and mortar fires, you successfully halted the attack, destroying several Badland armored personnel carriers. Your platoon commander orders your squad to approach the vehicles to gather intelligence on any possible counterattack. As you approach the first vehicle, three unarmed soldiers stagger out of the vehicle, with their hands raised.

Issues: Are these men still combatants? Why or why not? What should you do?

Answer: Rules # 1 and 2. The general rule is that these men are still combatants unless they are too wounded to fight or surrender to you. As a military professional, your judgment is a key element in solving this problem. Because the men are unarmed and demonstrate their intention to surrender, you should let them do so. Once they are captured, they are no longer lawful military targets, so you should process them in accordance with the Six Ss and T.

5. You captured the first three men and seized the vehicle's radio. As you search them, you note that each has a helmet, flak jacket and water canteens. They also have military identification cards, family photos, and wedding bands. One of the men also has a small map, depicting your platoon positions, as well as what appears to be brevity codes for the radio.

Issues: Now that these men are your captives, what property, if any, may you seize? What property, if any, may they retain?

Answer: Rules # 1, 2, 3 and 8. Marines do not harm enemy soldiers who surrender, and do not kill or torture prisoners of war or detainees. They also do not steal from anyone and respect private property and possessions. Because you have captured these men, you are allowed to search them for weapons and items of intelligence value. In this case, the men can keep their helmets, flak jackets and canteens (items of personal protective equipment). Because you have a duty to safeguard these men, it makes good sense to allow them to keep their own protective gear. They may also keep their military identification cards, wedding bands and family pictures, because these are items of personal property. Finally, you may seize the map and brevity codes and provide them to the intelligence officer for analysis.

6. You are serving as a security guard at the battalion collecting point for detainees. You are in the interrogation room, while a certified interrogator, via a local national translator, interrogates one of the men from captured from the damaged armored personnel carrier. The detainee appears cooperative, but will not provide more than his name, rank, and service number. The translator is becoming agitated, insisting that the man knows information about an impending counterattack. The interrogator suddenly grabs the detainee, pulls him on to the table and threatens to jam his 9mm pistol in the man's mouth and pull the trigger.

Issues: Is this legal? What should you do?

Answer: Rules # 3 and 9. Marines do not torture or kill detainees. Despite the fact that the detainee may have valuable information that might prevent an attack, the interrogator's actions are illegal. It is understandable that the interrogator and translator may be frustrated, but that never justifies assaulting the detainee. You have an

obligation to do what you can to stop this assault, and to report the incident to your chain of command.

7. Same facts as problem six, except the interrogator leaves the room when the translator insists that the detainee knows about the counterattack. Right after the interrogator leaves, the translator begins to punch and kick the detainee, screaming at him to provide the information.

Issues: Is this legal? What should you do? Is the answer different because the translator is not a Marine?

Answer: Rules # 3 and 9. You are obligated to stop this assault and report the incident to your chain of command, the same as you would for problem six. Although the translator is a local national, the detainee is in US custody and we are therefore responsible for the detainee's health and safety. Again, frustration and the desire to obtain information that may save lives is not a justification for abusing the detainee.

8. Your unit has been tasked with capturing an elusive insurgent leader. Despite the best intelligence, he has evaded your efforts. However, you have just located his wife and young children. They are cooperative and there is absolutely no evidence that they are involved in any insurgent activities. You think you should detain them in order to force the insurgent to surrender himself.

Issues: Is this legal? What should you do?

Answer: Rules # 1 and 7. Marines only fight enemy combatants and treat all civilians humanely; in fact, the law requires us to respect all civilians and never target them intentionally. In this situation, there is absolutely zero evidence that the woman and children have committed any hostile actions or displayed any hostile intentions toward US forces. Their only possible "crime" is their relationship to the insurgent leader. Despite the importance of capturing this elusive insurgent leader, we cannot and must

334

not violate the law of war to obtain this objective. Because the woman and children have not committed hostile acts or displayed hostile intent, detaining them to draw out the insurgent leader would constitute kidnapping.

9. Same facts as problem eight, except you learn through a reliable source that the wife directly supports the husband's activities by hiding cell phones and other IED initiating equipment in the home, in addition to storing weapons in a shed behind the family home. During a raid of the residence, you uncover the cell phones and other IED related items (located in a false wall identified by the source), as well as the weapons cache in the shed. Preliminary tests reveal the wife's fingerprints on several of the rocket-propelled grenade launchers.

Issues: Can you detain the wife now? If so, why? How about the children?

Answer: Rules #1 and 7. Marines engage only enemy combatants and must treat civilians humanely. However, based on these new facts, it appears that the wife may be committing hostile acts toward US forces, or at a minimum, displaying hostile intent by personally storing these items in and near her home. Her actions may make her a combatant, and there is sufficient justification for detaining her for questioning and intelligence exploitation. Because there are no facts demonstrating the children's involvement, they still may not be detained. [Note that depending upon the age of the children, they may need to be placed in a shelter or with other family members for their own care and safety, since their mother will be in your custody to determine her combatant status.]]

10. Your unit just finished a firefight with insurgent forces and has started collecting prisoners and casualties. One of your platoon commanders orders his men to treat the Marines first, without any regard to who has the most serious injuries.

Issues: Is this a lawful order? How do you determine who receives treatment?

Answer: Rules # 4 and 9. Marines collect and care for the wounded, whether friend or foe. Once it is safe to police up the battlefield, you and your Marines should collect and care for all wounded consistent with the seriousness of their injuries. You have a duty to assist the enemy wounded as well as your own men. Who gets treated first is a function of the nature and extent of their injuries. For example, you would treat a wounded insurgent suffering from a sucking chest wound before treating a Marine with powder burns on his hands and arms. Moreover, because the platoon commander's order encouraged you and others to violate the law of war, you should report it to your chain of command.

11. Your battery has occupied a village that contains an abandoned enemy military hospital. A few days ago, a section chief took an ambulance (marked with the Red Crescent) from the hospital, and used the vehicle to carry out a reconnaissance mission. The section chief is preparing for another mission when the First Sergeant informs you what has been happening with the vehicle.

Issues: Were the section chief's actions legal? What if anything should you do?

Answer: Rules # 5, 8 and 9. Marines do not steal property and do not misuse or destroy protected personnel, facilities or equipment. Although seizing the ambulance itself was not illegal, the section chief violated the law of war by taking the protected equipment (an ambulance still marked with the Red Crescent) and using it to gain a military advantage over the enemy forces. Assuming the vehicle was necessary to conduct the reconnaissance, the section chief should have remarked the vehicle (or at least used mud to cover up the Red Crescent), so that the enemy would not believe it was a protected vehicle. (The reason this is so important: If the enemy learns that a protected symbol is being misused, other ambulances displaying the symbol properly are more likely to be targeted.) You should report the violation to your chain of command and ensure that the vehicle is remarked if it is going to be used for combat operations.

12. During an urban patrol, your unit is ambushed by an enemy force. After quickly taking cover, you realize that they are firing at you from positions inside an ancient church.

Issues: Under the law of war, can you return fire? Why or why not? If you can return fire, what weapons can you use?

Answer: Rules # 1, 5 and 6. Marines fight only enemy combatants and do not attack protected facilities like churches and mosques. However, in this case, the enemy is attacking you from inside the church. Although the church would ordinarily be a protected place that you could not target, the enemies' actions have violated the protections for the church. Just as the section chief in problem eleven violated the law of war by using the Red Crescent vehicle to conduct a reconnaissance, so too the enemy has violated the law of war by attacking you from within a protected place. Under the law of war, you can engage the enemy in defense of yourself and the other members of your unit. The ROE may contain specific rules on this type of situation as well.

Also note that Marines destroy no more than the mission requires. Depending upon the number of enemy and the weapon systems available to you, you may want to use small arms to engage and destroy the attackers. Consider the possible effects on other civilian buildings and personnel in the area (and applicable ROE) and use your best judgment to eliminate the threat.

13. Your squad is clearing buildings during an offensive. There has been weeks of civil affairs and special operations efforts to alert the community to this action, encouraging innocents to flee the area. As you enter a room you see an adult male pointing an AK-47 rifle in your direction. You also see a small child and an unarmed teenage male.

Issues: Who can you engage?

Answer: Rules # 1, 6 and 7. Marines fight only enemy combatants, destroy no more than the mission requires, and treat all civilians humanely. Despite all of the civil affairs and psyops efforts to clear the area prior to your operation, we cannot be certain that all innocent civilians have left. In this situation, the man with the AK-47 appears to be demonstrating hostile intent toward your squad, making him a lawful target. (Whether he is in fact a combatant, or a civilian who did not get the message and is trying to defend his home and family is the issue. However, with an AK-47 pointed at them, the squad probably does not have the luxury of time to debate this point.) As for the teenage male, there is no indication of hostile action or hostile intent, so you may not shoot him. However, you may observe him and could detain him for your own safety and the safety of your men, as you continue to sweep the house for threats. The small child is not a threat and must not be engaged.

14. During the same operation, your squad uncovers a large number of weapons, ammunition and explosives in a family's apartment. The women and children present deny involvement with the weapons and explosives.

Issues: What can you do with the women and children? What should you do with the weapons and explosives?

Answer: Rules # 1, 6 and 7. Marines fight only enemy combatants, destroy no more than the mission requires, and treat all civilians humanely. Under these facts, you can probably detain the women and children for your own safety and the safety of your men, particularly as you continue to sweep the house. They may qualify for longer detention for their failure to obey the orders to flee the area prior to the operations. As soon as possible, you should remove the weapons and explosives from the home. These items remain dangerous to you and your men, and could also harm the women and children in the home. They should be moved to a safe location for storage or destruction in an area that is free from civilian personnel and buildings.

15. You are manning a .50 caliber machine gun at Post One aboard your forward operating base. Approximately 300 yards away to the west you see a group of 100 to 200 people gathering. To the north, you observe several civilian males approximately 200 meters away, armed with AK-47s and rocket propelled grenade launchers. The men are approaching your position tactically, using cover and concealment and “bounding” (one group establishing over watch while another group advances).

Issues: Are these men combatants, and if so, can you target them? Why or why not?

Answer: Rules # 1 and 7. Marines fight only enemy combatants and treat all civilians humanely. In this situation, you should observe the large group to the west for signs of hostile action or hostile intent. At this point, they appear to be civilians and therefore cannot and should not be engaged. The men approaching from the north, however, are demonstrating hostile intentions toward you and the Marines in the base. As in problem two, this conduct of openly carrying weapons while moving tactically toward your position, makes them combatants. You may engage them with the .50 caliber machine gun, as long as they have not surrendered or are not too sick or wounded to fight.

Appendix B: Moral Compass Self-Assessment Worksheet

Have you ever heard of a moral compass? It's another name for a conscience. Your conscience or moral compass guides you to do the right thing when there are no written orders or guidance from leaders, parents, or teachers.

Do you feel everyone possesses a moral compass?

If so, what has provided you with your moral compass?

What moral problems do you see most often in the barracks, at work, or on liberty?

How does the moral compass of the average Marine compare to that of that of the average civilian?

If you have experienced combat, did you witness any moral problems?

What have Marines done that was ethically right or morally courageous on the battlefield?

What are Marines always expected to do morally correct?

What are things Marines should never do?

What drew you to the Marine Corps? Does morality and ethical conduct affect your way of thinking about your profession? As a Marine, should you be held to a higher standard than civilians, than other service members?

How does moral conduct on the battlefield affect the mission?

How do you deal with an enemy that doesn't appear to have moral values?

Index

Adaptability	xiv
Bearing	xiv, 217, 249, 293
Character	xiv
Climate	xiv, 293
Commitment	xiv, xvi
Compliance	vii, 2, 4, 319
Courage	xiv, xvi, 19, 49, 157, 217, 233, 249, 263, 315
Decisiveness	xv, 103, 281
Dependability	xv, 89, 309
Endurance	xv, 39, 217, 263
Enthusiasm	xv
Ethics	xi, xv, 8, 9, 231
Honor	xv, xvi, 19, 49, 157, 158, 160, 161, 177, 181, 186, 189, 190
Initiative	xv, 191
Integrity	xv, 49, 71, 115, 249, 263

Integrity	49
Judgment	39, 49, 71, 103, 115, 191, 263, 281, 293, 315
Justice	vii, xv, 19, 63, 65, 68, 191, 233, 242, 309, 315, 328
leadership	xi, xiii, xvi, 17, 42, 44, 45, 47, 66, 87, 100, 101, 102, 111, 115, 118, 143, 147, 153, 157, 161, 183, 184, 187, 188, 211, 235, 239, 257, 260, 263, 265, 268, 272, 273, 276, 279, 280, 283, 287, 290, 295, 296, 297, 309, 310, 312
Loyalty	xv, 19, 157, 233
Moral Ambition	4
Moral maturity	4
Moral Maturity	4
Moral Understanding	3
<i>moralist</i>	12
Morality	xvi
Proficiency	89
<i>proportional</i>	12
<u>Responsibility</u>	89, 306
Tact	xvi, 39, 115
Unselfishness	xvi, 71, 103, 157
<i>utilitarian</i>	12
value judgments	3
values	xi, xv, xvi, 17, 41, 157, 187, 191, 224, 243, 319
Values	xi, xvi, 65, 191
Virtue	xvi
<u>Welfare</u>	306



Professional Development Division, Marine Corps University, Quantico, Virginia 22134-5067
<http://www.mcu.usmc.mil/>